

Social policy in the European Union: state of play 2017

Edited by

Bart Vanhercke, Sebastiano Sabato and Denis Bouget

Social policy in the European Union: state of play 2017

Eighteenth annual report

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Preface

2016 saw the European Union (EU) facing some of its most difficult challenges since its creation. For the first time ever, the unthinkable scenario of a Member State leaving the club became a reality, creating the risk of a domino effect that could lead to the disintegration of the EU. That same year, the refugee crisis reached its climax, painfully illustrating the lack of solidarity among the Member States and the resulting ineffective EU responses. Yet, 2016 was also the year when policymakers became painfully aware that the *status quo* was unsustainable, when debates about future scenarios developed and concrete proposals were tabled.

Social policy in the European Union: state of play 2017 provides an analysis of the abovementioned crises, describes the key EU social policy initiatives undertaken during the past year, while identifying possible ways forward. The volume considers 'high-level' political developments (Brexit and the refugee crisis), followed by a discussion of two possible scenarios to overcome the present deadlock: further integration or differentiated integration. One of the most promising attempts by the European Commission to reinvigorate the social policy agenda – the European Pillar of Social Rights – can be seen as an illustration of the path to differentiated integration. The Brexit shock notwithstanding, life in the Brussels bubble continued in 2016. The second part of the volume therefore describes and discusses 'day-to day' policy development that took place during the past year in the social domain. These include recent developments in the European Semester, the state of EU sectoral social dialogue, healthcare, work-life balance and active aging.

With the EU now at a crossroads, long-term reflection on the future of the European Union (and the place of the social dimension in it) is necessary. This volume contributes to this reflection by addressing three questions: *How has the Union reacted to the crises that culminated in 2016? Has the EU response been effective and sufficient? What are possible ways forward for the EU's social dimension?*

This edited volume starts by spelling out the broad analytical and theoretical questions of importance to the present and future of the EU, addressing the existential questions voiced above. In Chapter 1, Mario Telò provides a broad view on the process of European integration, also flagging the significant results achieved so far. The author identifies a process of differentiated integration – a 'multispeed Europe' with core groups of countries spearheading a new era of European integration – as the only way forward to overcome the political and institutional *cul-de-sac* hampering further integration.

Daniel Clegg addresses the employment and social determinants of Brexit in Chapter 2. He convincingly shows that, while the 'leave' vote took place in a positive economic situation with UK employment at record levels, not everybody fully enjoyed the results of growth and employment, thus leading to widespread discontent with the socio-economic status quo. Many people felt themselves 'left behind'. To avoid contagion, the author proposes some lessons the EU should learn from Brexit.

In Chapter 3, Dalila Ghailani addresses the refugee crisis and Member States' and EU responses. The author maintains that the crisis has led to the emergence of a worrisome lack of solidarity between Member States. Apart from being largely ineffective, Member States' and EU initiatives have threatened the (human) rights of the refugees. Sebastiano Sabato and Bart Vanhercke discuss (Chapter 4) the broad consultation process that led to the publication of the Recommendation on the European Pillar of Social Rights, arguably the most important EU initiative in the social domain in the past years. While the consultation process in itself promoted renewed Commission dynamism in the social domain, the authors argue that the EPSR should not be a simple declaration of principles, but rather an enforceable instrument implemented through legislative and non-legislative provisions and complemented by a detailed roadmap.

In Chapter 5, Amandine Crespy and Vivien A. Schmidt provide a critical analysis of recent developments in the European Semester. Its focus, the authors maintain, is still on structural reforms with a strong dose of labour market deregulation, while the promotion of social investment has remained weak and *de facto* constrained by the prevailing orthodox conception of competitiveness. Changes to the European Semester should be aimed at further enhancing its legitimacy. The striking contrast between European social dialogue at sectoral and cross-industry level is discussed by Christophe Degryse in Chapter 6. The author finds that, at cross-industry level, European social dialogue is not yet producing results living up to its stated new ambitions. At sectoral level, activity by the social partners seems to have reached cruising speed: while less dynamic than in the period 2004-2007, no less than 36 new joint texts were adopted in the sectoral social dialogue committees in 2016.

In Chapter 7, Rita Baeten explores three 2016 EU-level developments that apply to health services and in particular to health professions. The author shows how EU internal and external developments promoting cross-border trade in services create substantial legal uncertainty and put pressure on the capacity of health authorities to regulate healthcare providers. The EU seems to consider that regulation of healthcare providers, rather than a way of protecting patients, is instead an obstacle in the way of a functioning market. In Chapter 8, Denis Bouget, Chiara Saraceno and Slavina Spasova describe the different types of national long-term care schemes, revealing remarkable variation across the Member States. The authors conclude that European and national policies seem divided between the aim of supporting the work-life balance of family carers – thus helping them to remain in the labour market – and that of recruiting them as main providers of care. They argue that recent work-life balance policies are leading to the emergence of precarious working conditions for the caregivers.

In Chapter 9, Ramón Peña-Casas emphasises that while youth unemployment has become a priority for the EU, particular attention should also be given to encouraging the participation and social inclusion of an ageing European population. The main development at European level is represented by the Framework Agreement on Active Ageing and an Inter-Generational Approach concluded by the social partners in December 2016. In the final chapter, the editors conclude that 2016 was characterised by mounting expectations but low actual delivery (the draft EPSR notwithstanding) in the social domain. Despite high hopes, yields were low, with burning problems – including Brexit, three years of the refugee crisis and the unbalanced EU socio-economic governance – remaining unresolved and even backfiring. They propose five concrete steps to move social Europe forward: it is time to move from high hopes to high yields. The chronology by Cécile Barbier summarises the key events of 2016 in the area of social and economic affairs.

The European Social Observatory has worked together with the European Trade Union Institute and renowned external scholars to draw up this year's edition of the book. Through this collaborative publication, we aim to contribute to the debate between policymakers, social stakeholders and the research community, while providing accessible information and analysis for practitioners and students of European integration.

We look forward to engaging in a dialogue with you over the crucial issues addressed in this volume.

Bart Vanhercke, Sebastiano Sabato and Denis Bouget (OSE)
Maria Jepsen and Philippe Pochet (ETUI)

Part I

High-level politics: between integration, disintegration and differentiated integration

Chapter 1

The present and future of the European Union, between the urgent need for democracy and differentiated integration

Mario Telò

Introduction

The European Union has experienced an unprecedented multi-dimensional and prolonged crisis, a crisis which cannot be understood in isolation from the international context, with major global economic changes to the detriment of the West. Opinions differ as to the overall outcome of the European policies adopted in recent years to tackle the crisis: these policies saved the single currency and allowed for moderate growth, but, combined with many other factors, they exacerbated the crisis of legitimacy. This explains the wave of anti-European sentiment in several Member States and the real danger that the European project will collapse completely.

This chapter analyses the contradictory trends at play and examines more closely how to find a way out of this crisis – a way which must be built around the crucial role of the trade union movement, both in tackling Euroscepticism and in relaunching the EU. This drive to strengthen and enhance democracy in the euro area, and to create a stronger European pillar of social rights, will not be successful without new political momentum for the EU led by the most pro-European countries. The argument put forward in this chapter is that this new European project will once again only be possible using a method of differentiated integration.

This paper starts with two sections juxtaposing two contradictory sets of data. On the one hand, we see the social and institutional achievements of the past 60 years: despite everything, the EU is the only tool available to the trade union movement which provides any hope of taming and mitigating globalisation (Section 1). On the other hand, there is the unexpected scale of the many trends seeming to lead towards the disintegration of the EU, and of the destabilising consequences of unbridled globalisation, triggering a wave of Euroscepticism and an urgent need for more democracy (Section 2). Section 3 analyses the features of the policy adopted by the EU between 2011 and 2016 to tackle the crisis, a policy which is the outcome of a complex balance of power between social and political forces, ideas and institutional procedures. It also highlights the shortcomings of the three alternative proposals. Section 4 looks more closely at a possible political role for the European trade union movement, meeting both the social and security-related concerns heightened by the multiple crises affecting citizens. Unions can fight for greater legitimacy and effectiveness for the EU via a system of differentiated and open integration of Member States, refusing to accept either the collapse of the Union or the lowest common denominator. In this section, we therefore formulate specific

proposals for the 27 EU Member States, the 19 euro area countries, and core groups of a minimum of 9 countries, which will spearhead a new era in European integration.

1. The paradox of Europe: the underestimation of 60 years of achievements and the method which made them possible

No historical entity has a future if it has no shared awareness of its past. Paradoxically, the historic achievements of the European integration process are far more clearly recognised in other world capitals, from Washington to Beijing, from Brasilia to Tokyo, than within the EU itself. Here are but a few of these achievements: more than 60 years of peace between former enemies, the strengthening of internal democracy in its Member States and the beginnings of a supranational democracy, freedom of movement, the building of a global non-military power, and the EU economic and social model.

We will now look more closely at the social and economic achievements of the EU, considered by the greatest living European philosopher, Jürgen Habermas, to be the soul of Europe. These last sixty years have coincided with an increase in economic and social prosperity unprecedented in European history. In 2014, despite the economic and financial crisis, the Gross Domestic Product (GDP) of the EU-28 was higher than that of the United States¹. In addition to this prosperity, the EU has created its own social model, which still, in spite of the increases in inequality, strikes a better balance between fairness and competitiveness than elsewhere in the world (Habermas 2005). Unlike the Japanese and US forms of capitalism, and in the difficult situation of having to compete with the emerging economies (including China), the EU seems to better reconcile economy and society, and to preserve the essence of its values of social cohesion. The concept of a ‘Social market economy’ was included in the 2007 treaty; a European Social Charter was adopted in 1989; 60 years of social legislation have been implemented and multiple social dialogues consolidated. All these choices have created a socio-economic system which, more than any other social model, has been able to withstand forty years of global neoliberal pressure. Even more importantly, the European socio-economic model, the ‘social market economy’, gives the lie to the neoliberal view that economic competitiveness is incompatible with high salaries, the ‘welfare state’ and social Europe (Ferrera 2009). Finally, only in Europe is it possible to influence the future of globalisation by means of internal social dialogue. The EU gives the trade union movement hope that it is possible to civilise and manage globalisation (with the help, of course, of the necessary international alliances).

In the Member States, national politicians, often exhausted and corrupt, do not know how to communicate the scale and uniqueness of these achievements to the general public. Instead, they have either used the EU as a scapegoat for the current severe, multi-dimensional crisis, or have made it the subject of dreadful rhetoric which does

1. The World Bank statistics available for 2014 confirm that at that time, the GDP of the US was 17.42 trillion US dollars, and that of the EU-28, despite the crisis, was \$18.51 trillion. Of course, the US, with 318.9 million inhabitants, still has a higher per capita GDP: \$55,230, compared with \$35,742 for the 508 million EU citizens (source World Bank 2015).

not reach the younger generations. The result has been an explosion of Euroscepticism in all Member States, attracting between 20 and 45% of voters. This chapter points out that the achievements listed would be inconceivable without the method which made them possible: differentiated integration. This method, whereby one group of countries can move towards more Europe, while those who do not agree cannot hold them back but may catch up later, is once again on the agenda. A new balance must urgently be found between efficiency and democratic legitimacy, and, once again, this will only be possible through differentiated integration. Some obvious examples are the monetary union and the Schengen Agreement, but we could add, for the benefit of sceptics, the further example of the group of countries, led by the United Kingdom, which in 1960 launched the European Free Trade Association (EFTA), as they were unhappy with the community method proposed by Jean Monnet and at the heart of the European Coal and Steel Community (ECSC) and the European Community (EC). It did not take long, though, for the EFTA countries, originally against the idea of supranationalism, to join the EC: 1973-1995.

2. The global context of the crisis and the scale of the challenges facing Europe

Why this urgent need for democracy? We will not understand this unless we view the multiple crises affecting Europe since 2010 (see also Vanhercke *et al.* 2016) in its proper global context. The economic recession, the ensuing mass unemployment (with the EU average unemployment rate increasing from 7% in 2007 to 10.8% in 2013; source Eurostat), the migration and refugee crisis, the increasing terrorist threats and the heightened fear: all these phenomena, which explain the wave of populist, nationalist and protectionist movements in several European countries, originate in the general sense of insecurity produced by largely unbridled globalisation. The crisis has merely speeded up an existing trend towards a major historic change: in 2007, the new economic powers overtook the advanced Western economies in terms of percentage of global GDP. It is this factor that explains what Susan Berger, a sociologist at the Massachusetts Institute of Technology (MIT), refers to as 'globalization malaise' on both sides of the Atlantic (presentation to the International Conference of Europeanists, ICE, Philadelphia, 2016). The millions who have lost out from and are victims of globalisation (reduced income, competition from migrants and refugees, etc.), particularly members of the working and middle classes concentrated in many now marginal Western regions, vote for extremes, against establishments. In Europe, in a context where weak and fearful national leaders blame everything on 'Brussels', the EU is seen, by an act of unprecedented manipulation, as the main culprit. In fact, however, the EU institutions merely implement what Member States have freely and voluntarily decided, which is then ratified by the European treaties and the Council of the European Union, meeting in its various formations. The EU, the only tool available to Europeans to counter unfettered globalisation, is singled out for blame by populists at each national election, which becomes a vote for or against the Union. These populists have thus won their first battle.

The nationalist and protectionist extreme right, from Marine Le Pen to Nigel Farage, Viktor Orban to Geert Wilders, Norbert Hofer to Matteo Salvini, has, de facto, taken on the leadership of the populist movement aiming to topple Europe, which has already won victories in the United Kingdom (see Clegg in this volume), Hungary and Poland, and which now plays a central political role as an ‘agenda-setter’, upsetting national governance, in Austria, the Netherlands, Italy, France and Scandinavia. The values, past achievements and future progress of Europe will only really receive new momentum if strong action is taken to address the urgent need for democracy, to counter the perceived gap between the ‘people’ and the elite. Despite the initial victories over the populists, this remains a serious challenge. This political uncertainty slows growth and threatens democracy.

In an uncertain European political context, the role of the organised trade union movement has not been sufficiently highlighted. This movement plays, and can potentially play, an essential role in avoiding a situation where this artificial cleavage between the people and the technocratic elite – which exists more in the imagination than in reality – has a devastating impact on democracy.

The trade union movement – both national and transnational – expresses an important historical fact: despite the crisis and the various manifestations of nationalism, the differences between citizens within individual Member States are still greater than the differences between those Member States. 51% of citizens feel themselves to be both citizens of a nation and citizens of Europe, while 39% only feel they belong to a nation (Alesina *et al.* 2017). The European trade union movement, more so than political parties, expresses the potential for a large-scale popular movement calling for more democracy in the EU, a movement which would be both transnational and rooted in individual nations, combining action on social issues with a global anti-populist platform.

Social issues are vital. Youth unemployment² could result in a ‘lost generation’, lost to the labour market, a situation rightly denounced by the President of the European Central Bank, Mario Draghi. We must not, however, over-simplify. The reasons for the populist successes are not only socio-economic, as has been confirmed by the Oxford Economics research institute (4 May 2017). In this multi-dimensional crisis, socio-economic reasons are increasingly intertwined with political and cultural issues specific to national contexts: high-level corruption, unfettered immigration, fear of terrorism, anti-EU sentiment stirred up by inept or manipulative political leaders, etc. Security has become the key issue. On the one hand, there are the demands, particularly in poorer districts and circles, for internal security from the negative social effects of the crisis and from uncontrolled migration. Then there is the desire for external security from terrorist threats and international instability. Unless the trade unions are given a central role in meeting these objectives, the populist extreme right will increasingly be able to present itself as the only force able to reconcile demands for social protection and for security, through a nationalist, exclusive, racist and protectionist agenda.

2. 35% in Italy, 24% in France, 40% in Spain in 2016, according to Eurostat.

What, then, have been the political responses to these new challenges? Democratic responses which combine openness with protection, from social deprivation and from outside threats, seem to be more effective outside the euro area, particularly in Sweden (despite an influx of refugees amounting to more than 10% of the population), than in the euro area itself. Does, then, the centralised regulation of the eurozone exacerbate the lack of legitimacy? Are monetary integration and European supranationalism – further developed during 2011-2016 – the problem rather than the solution? Or should the governance of the euro area be further strengthened?

The academic community is split on this question. A report from the *Hertie School of Governance* in Berlin (Hertie School of Governance 2015), for example, seems to suggest that more supranational integration within the euro area results in less legitimacy. Another school of thought asserts the opposite: only with more effective economic, social and security policies, supranational coordination and central regulation, reconciling austerity and growth, stabilisation and social solidarity, will it be possible to help States in crisis and to enhance the EU's legitimacy by pointing to tangible benefits. The first view, if taken to its logical conclusion, should lead to the dismantling of the single currency, while the second would suggest the need, above all, to boost the efficiency of the euro area, subject, however, to an increase in democratic accountability. We shall now examine more closely the interplay between disintegration and integration in recent years (see also Fabbrini 2016).

3. Results of and problems linked to the anti-crisis policy

The global economic and financial crisis of 2007-2016 was a severe test of democracy in European States. It had a serious impact on the States of the EMU (Economic and Monetary Union), particularly those which were more indebted, revealing the internal weaknesses of the incomplete and asymmetrical institutional arrangement adopted at Maastricht in 1992. The crisis has increased the gaps in competitiveness and divergences between Member States' economic and budgetary policies (particularly between the North and the South), while the introduction of the euro should have fostered convergence and budgetary transparency. The first manifestations of various forms of Euroscepticism targeted not only the excesses of austerity policies but also the EU project as such. Eurosceptics attacked, in particular, the moves towards more supranationalism and macroeconomic coordination, which were seen as hierarchical, authoritarian and, in terms of content, 'characterised by the resilience of neoliberal austerity' (Schmidt and Thatcher 2013).

In 2009-2010, the anti-cyclical policies adopted by a number of European states in response to the global recession increased public finance deficits and, particularly in the South of the euro area, intensified the national sovereign debt crisis, which had become the weak link of the world economy (European Parliament 2016a). The financial cost of bailing out countries in crisis – Greece, Ireland, Spain and Portugal – seemed to the Northern States, led by Germany, a heavy burden to bear. The international markets threatened to prevent states in crisis from financing their sovereign debt, and the EU

seemed powerless. The peak of the crisis was reached when plans were drawn up for Greece to exit the EMU.

The recession was also, at its heart, a manifestation of a political crisis of governance, concerning the balance of power between the Eurogroup and the European Council. Since 2011, anti-crisis policies were designed essentially to correct the initial institutional asymmetry between a strong monetary Union and the lack of a real economic union between the Member States.

In 2016-2017, the euro area saw a return to (modest) economic growth. Despite the mistakes made, the hesitations and the compounding of internal differences, the euro was saved, and over a six-year period, the economic and monetary union made considerable progress towards integration, far more than during previous decades (Rodriguez *et al.* 2016). This progress took the form of a reduction in budgetary deficits in most Member States, improved international competitiveness, reform of economic governance and, according to some, the ‘socialisation’ of the European Semester (see Crespy and Schmidt in this volume).

The role of the European Central Bank (ECB) has been strengthened, particularly under the leadership of Mario Draghi, to provide pro-active support to growth. It is not sufficiently emphasised that after the very important European Council of 28 June 2012, the ECB President announced that the bank was ‘ready to do whatever it takes to preserve the euro’, a statement which discouraged international speculation in the debt of countries in crisis. The ECB, by its interest rate policy, its massive cash injections and other unconventional measures, regularly intervenes to support the banking system and, since the end of 2014, to help businesses and provide banking credit to individuals (‘quantitative easing’). Such an approach is innovative but dangerous: this growth-support strategy is opposed by much of German public opinion and by the Bundesbank. Mario Draghi is still firmly supported by Angela Merkel, but subject to certain conditions: the ECB knows that it may not issue Eurobonds, which some would see as the European Union becoming the ‘Transfer Union’, nor may it request forms of mutualisation of national public debts. Draghi’s position has been attacked as lacking in legitimacy, since it is unusual for non-orthodox European leadership to be *de facto* granted, for years, to the ECB President, in the absence of unified political leadership of the euro area (for example, a European Minister of Finance).

With regard to solidarity measures, the intergovernmental treaty (2 February 2012) establishing the European Stability Mechanism (ESM), a permanent structure, was a second important step forward³. Furthermore Germany, in return for showing solidarity and thus potentially unsettling the democratic and legal consensus back home, logically called for multilateral surveillance of the indebted States, as a condition for disbursing the aid to them. On 2 March 2012, 25 EU governments approved an intergovernmental treaty on stability, coordination and governance in the EMU, proposing to the signatory States a timetable for reducing their public debt and deficit (the ‘golden rule’ of

3. The ESM has 700 billion euros in capital, subscribed by the Member States: in 2012-2013, 50 billion had been committed, particularly in Spain, Portugal, Cyprus, Ireland and Greece.

budgetary policy). This treaty was freely and paradoxically ratified by all the States at the time of the crisis, but, since it aims to strengthen the rules and will ultimately be included in the community system, it exacerbates the democratic deficit in countries in crisis. In the same way, economic governance has been strengthened by several coherent but problematic decisions. These include the Stability and Growth Pact (an add-on to the Treaty of Maastricht), signed in 1997, revised in 2005 and in 2011; the 'Six Pack', a set of six measures taken in 2011, which set out the multilateral surveillance procedures for budgetary and macroeconomic policies; and the European Semester, which establishes macroeconomic coordination and prior multilateral surveillance of national economic policies before budgets are voted on by national parliaments. There is also the Banking Union, which implies a commitment to assist banks in difficulty, but which also, therefore, involves surveillance by the ECB. The Single Supervisory Mechanism (SSM) dates back to 2013, but the Banking Union will only be complete once a deposit insurance system is in place.

What assessment can we make of seven years of anti-crisis policies? The outcome determines future solutions. One hyper-simplified interpretation is very widespread: austerity and intergovernmentalism have now won the day, thus deepening the crisis in Europe and triggering the urgent need for more democracy. The caricature of a 'neoliberal Europe' dominated by Germany in fact only exists in extremist rhetoric. It is not possible to accept this interpretation unless we ignore four factors which acted as a counterweight and enabled compromises to be struck with the champions of one-way austerity.

Firstly, the national and European influence of the trade union movement, a strong lever and counterbalance within European and national social dialogue: despite the unequal strength of its affiliates within the Member States, the ETUC has undeniably preserved considerable negotiating powers at the centralised level, with the Council and the European Commission.

Secondly, the fight put up by the Southern countries in the multilateral bodies such as the Councils. One key date: 13 July 2015. On that day, the European Council decided to keep Greece in the euro area, to grant it a third loan (87 billion euros) and reject the 'Grexit' plan backed by the German Minister of Finance, Wolfgang Schäuble. This decision, finally also accepted by Angela Merkel, proposed by Hollande/Macron, Renzi, Belgium and other States, was a significant step forward in the 'politicisation' of the euro and the euro area, as the core of the EU. There has also been clear progress in terms of growth, with growth levels above 1% in Portugal, Spain, Italy, France and also Greece, particularly in 2017.

Thirdly, the concessions made by Angela Merkel show that Germany is not dominated by neoliberalism, but, rather, influenced by the Christian ordoliberalism which, together with social democracy, underpins the 'social market economy'. This also explains the post-austerity change of direction: the flexibility granted by the Juncker-Moscovici Commission since 2014, and the Juncker plan, facilitating a return to growth in 2016 and prospects for a new Franco-German agreement based on clear reciprocal commitments.

Finally, although weakened, the European Parliament has played an active role, by its many initiatives to further growth and employment. The development of new economic governance practices cannot be boiled down to merely a clear victory for intergovernmentalism. There has, it is true, been a shift towards intergovernmental treaties; the Commission has lost some ground in this way, but has managed to retain its powers. It was inevitable, thought some (including the former President of the European Council Herman Van Rompuy), that the new substantial financial commitments would require greater surveillance by governments (Van Rompuy 2015). However, in several cases, starting with the European Semester, a compromise has been struck between supranational and intergovernmental methods, with a move towards new ways to coordinate national policies: some refer to the ‘Merkel method’ (Telò 2015). And for the last two years, Parliament has been coming to the rescue and asking to have a say, upstream, for example, in the European Semester process (European Parliament 2016b).

The European Council is a multilateral body, and has inevitably taken the path of compromise: the most ‘virtuous’ Northern countries, headed by Germany, agreed to the European solidarity mechanisms in return for greater surveillance of the economic policies of countries in crisis. The euro, and the political nature of European integration, have thus been saved, but we are left with a crisis of legitimacy and efficiency. Yet it will only be possible to go beyond the achievements of 2016, to respond to the urgent need for democracy, with a process of differentiated integration, centred on the euro area.

Was there really no other way out of the crisis? We have seen the emergence and failure of three supposedly ‘alternative’ solutions.

Firstly, the extreme-right nationalist, populist European movements call for the end of the euro and a return to national currencies, as part of a neonationalist and protectionist agenda which focuses on rejecting immigrants. However, the first electoral defeats of populism give us a more realistic view of the balance of power. ‘Global Britain’, ‘America first’, ‘Illiberal Hungary’: this mix of nationalist rhetoric and intolerant protectionism is only one of the two options open to the West. These movements represent a trend towards decline, towards possible suicide in this radically changing world. In Europe, the electoral cycle and the economic recovery of 2017 give us hope that a new European vision could stop this wave of destruction.

Secondly, the question is whether the left-leaning nationalist populist movements offer a real alternative to the strategy of increasing democracy in the euro area, or whether they just smooth the way for the original, right-wing forms of nationalism? The Spanish ‘Podemos’ party, the ‘Five Stars’⁴ movement in Italy, Mélenchon’s ‘Unbowed’ party in France are already influencing their respective national agendas by positions which are ambiguous, and which sometimes coincide with those of the extreme right. They have adopted the criticisms voiced by Keynesian economists (Paul Krugman, Joseph Stiglitz, Thomas Piketty) and by some social democratic sociologists (Fritz Scharpf, Wolfgang

4. These movements often adopt left-leaning, right-leaning and/or centrist positions, depending on the issues involved.

Streeck), who implicitly refer back at times to the old debates of the 1980s, when François Mitterrand's socialist minister, Jean-Pierre Chevènement, rejected Jacques Delors' pro-European approach, and instead advocated 'competitive devaluation' and Keynesianism within one country. Progressive theoreticians end up accepting the end of the euro as the price to pay for the nationalisation of social democracy: in the North, a return to strong national currencies and national welfare, and, in the South, a headlong rush by economies in crisis towards the abyss of competitive devaluation, with a loss of workers' purchasing power, and capital flight. According to Wolfgang Streeck, any attempt to improve and democratise the governance and policies of the euro area would be 'a waste of time' (Streeck 2014)⁵. This approach might go down well with those nostalgic for national leftist strategies of limitless public spending, which have failed in the past. It would, however, be to forget the shared analysis of the vast majority of the academic community, also accepted by the trade unions and the social democratic movement since Willy Brandt, François Mitterrand and Neil Kinnock. This analysis has shown how national politics alone are insufficient to cope with the common issues and threats facing European and world governance. It is not by chance that nationalist populism has become the domain of the far right. The return to national sovereignty is a hypocrisy and a theoretical and political step backwards which is devastating to progressive thinking and movements. To avoid these ideas spreading and paralysing progress, the only possible response to populist nationalism is increased unity among the pro-European countries, by means of differentiated integration. It is up to these countries to rescue the values of democracy, of a Europe which stands for peace, tolerance, openness and social progress, also in the interest of 'outsiders', who could, in the future, become insiders.

A third alternative strategy, described by Thomas Piketty and others in the project 'Treaty for Democratisation', or 'T-Dem' (Piketty *et al.* 2017), aims to meet the urgent need for more democracy in the governance of the euro area, which is a positive thing. However, it does so by means of an intergovernmental treaty establishing a European Inter-Parliamentary Assembly. In more detail:

- This new body would be in direct competition with the European Parliament, and the proposal ignores the fact that the Lisbon Treaty (Art. 14 TEU) grants the EP 'co-decision' power with the Council. The EP, it is true, has been weakened by the emergency measures taken to tackle the crisis, but it is striving to return to its original status. This initiative would weaken it.
- This new Inter-parliamentary assembly would have 'the last word' in disagreements with the Eurogroup Council: a body external to the single institutional framework of the EU could thus overturn its institutional balance. This seems a strange way to give new momentum to the Union.

5. It is most surprising that the highest levels of German political thought are issuing these neonationalist messages, which break with seventy years of analysis by the many theoretical schools of thought, including the Frankfurt School, as well as empirical social sciences, describing the irreversible decline of the nation state, the transformation of politics and the inevitable emergence of new, non-state political dimensions such as the EU.

- This new body (whether it has 100 or 400 members) would be designed with the stated aim of ensuring that representatives of creditor countries are in the minority. It would therefore have the last word on the euro area budget, which comes largely from the creditor countries, but would be able to push these into a minority. The indebted countries could thus oblige, for example, the Germans, Dutch, Finnish, Austrians etc. to mutualise their own debts, while, logically, they could increase their own indebtedness as high as they liked. This approach hardly seems fair or realistic. It would stir up disagreement, particularly, between those who believe that protecting the democracy of debtor countries should take precedence over protecting the democracy of creditor countries (Varoufakis 2016)⁶, and those who hold the view that maintaining a balance between creditor and debtor countries was a major democratic achievement in the years between 2010 and 2017. This alternative proposal would destroy that balance.

However, what we can take from this far-left approach is, firstly, the need for a deepening of the euro area, and, secondly, a call to strengthen the role of national parliaments. Article 12 of the TEU, though, already sets out this principle; Protocol No.14 on the early warning system and the Conference of Parliamentary Committees for Union affairs (COSAC), the European Conventions, are the most realistic instruments currently available, to be used in increasing synergy between the EP, national parliaments and the social partners.

These three approaches to exiting the crisis are not credible options for leaving the recession on an upwards note. They underestimate the positive dynamic already underway, the existing balances of power, and the scope that exists for democratic, trade union and political movements, involved in something new and more powerful than in the past, in a leap forwards towards democratisation and effective growth policies, by means of differentiated integration. The institutions support this new dynamic: the European Council, in its Rome Declaration of 25 March; and the Commission in its White Paper of March 2017, and especially in its recent reflection paper on the social dimension of Europe (European Commission 2017a) and the proposal for the adoption of a pillar of social rights (European Commission 2017b). The European Parliament takes a similar line, *inter alia* in its Resolution on the minimum wage and on an active role for the EP in the euro area and the European Semester mechanism (European Parliament 2016a).

The EU has not only been able to survive in the unexpected context of the most serious economic crisis since 1929, but has also been able to strengthen supranational governance. Nevertheless, overly tough intergovernmental negotiations have strengthened nationalist movements, and extreme austerity policies have *de facto* increased the need for greater democracy. The time has therefore come for a new leap forward: but how should this be achieved?

6. For more details, see: http://www.lemonde.fr/idees/article/2016/04/12/quand-yanis-varoufakis-retrouve-la-hauteur-du-chercheur_4900485_3232.html#vVFrDHHQxDaOoB4.99

4. The only path to greater efficiency and legitimacy: a multi-speed Europe and involvement of the unions

Among the forces in society, those represented by the trade union movement are the most objectively interested in consolidating and democratising the euro area. The business community and multinationals find it easier to adapt to a deregulated global economic context, but the trade union movement needs a strong political and institutional arsenal if it is to have any hope of regulating the globalised economy and international trade. A nation state alone, even a powerful one, will be unable to meet the challenges of global regulation in a world involving actors such as the US, China, India and the multinationals. Brexit is based on the illusion of a return to the British Imperial power of the 19th century Victorian era; the EU States, however, despite their differences, do not share this insular misconception.

For this reason, in the view of many theorists, including J. Habermas (2017), the EU needs a strengthened group of front-runners, a political ‘hard core’. This is the only way to hope to tackle the international instability of the era of Donald Trump (who points to Brexit as a model to follow), the aggressiveness of Putin, Islamic terrorism and, particularly, the untamed side of economic globalisation. Such a political and institutional approach is above all in the interests of those who have no other source of power, capital or military might: working people. There can be no individual or social freedom in a political system which is not autonomous and free at international level.

This need for freedom, for international accountability, and the resolve to determine the future of international governance are not present to the same extent in every EU Member State. In countries where the choices are made by populist or illiberal leaders, or where such movements help determine the government’s agenda, opposition is inevitable. The treaties, however, provide for ‘enhanced cooperation’ instigated by a minimum of nine Member States (Art. 20 TEU); others are not obliged to participate, but cannot prevent the States that so wish from moving towards further integration. The choice is therefore between giving up, i.e. restricting European cooperation to the lowest common denominator, and moving forward to create smaller hard cores, addressing issues which are priorities for European citizens.

It is, however, important here to clarify the type of enhanced, differentiated integration needed to meet the challenges. There are three possible negative models of differentiated integration, as well as a fourth model which is both possible and advisable.

The first model was proposed by Schäuble and Karl Lamers in 1994: a ‘*Kern-Europa*’ (hard core Europe), excluding the Mediterranean countries (Schäuble and Lamers 1994). This plan, relaunched in Schäuble’s proposal of 15 July 2015 to exclude Greece, would result in a small euro area, limited to the ‘Triple A countries’, as well as a small Schengen area: in other words, the end of the European project.

The second model, which could weaken the EU as a single institutional framework, would be to take up proposals (for example those made by Hennette *et al.* in *Libération*, April 2016) for an intergovernmental treaty between a limited number of countries,

along the lines of the 2013 fiscal compact. The Schengen agreement did indeed begin this way, and was then incorporated into the EU. However, such a questioning of the central role of the EU system could result in serious legal and institutional complications.

Examples of the third model, ‘variable geometry’, are the current limited applications of ‘enhanced cooperation’ with variable internal compositions: international divorces, the European patent, the ‘Tobin tax’. Altiero Spinelli would have described this functionalist option as ‘Europe à la carte’: each State commits itself only to the extent that fits in with its national utilitarian motives, without any overall political vision. This variant would have no political significance.

Fourth option: a multi-speed Europe able to meet internal and international challenges would require, firstly greater integration for the euro area and, secondly, the establishment of voluntary and open hard cores, based on the EU treaties, particularly in areas falling under the former second and third pillars of the Maastricht Treaty. We shall now examine this fourth model in more detail:

- Consolidation and democratisation of the governance of the euro area (Juncker *et al.* 2015 and Piris 2012) requires a new post of Minister of the Economy and Finance, President of the Eurogroup and, at the same time, Commissioner for Economic and Monetary Affairs⁷, accountable to a Eurozone Parliament (a specific EP parliamentary committee), in closer cooperation with the Conference of Parliamentary Committees for Union affairs (COSAC); it should also be given greater social legitimacy by the setting up of a social Eurogroup and regular interaction between the minister and the social partners.
- In parallel, a smaller number of countries could go further⁸ and advance towards more in-depth forms of voluntary integration: as well as ‘structured cooperation’ in defence policy (Art.46 TEU), the enhanced cooperation referred to in Article 20 TEU. In which areas? In areas of concern to European citizens, first and foremost that of security. Given the instability at our borders and in the world, the EU needs greater credibility in its role as a regional and global civilian power, with greater autonomy *vis-à-vis* the US. The only way to send out a strong signal to public opinion in the fight against terrorism is to move towards enhanced cooperation in fields related to the area of freedom, security and justice. One first leap forward would be the appointment of a European Prosecutor, for greater supranationalism and efficiency, as well as, above all, management of the reception and distribution of refugees⁹, while strengthening external controls on borders would save the Schengen system.

7. A proposal also made by the Italian Finance Minister, P. Padoan, in May 2016.

8. Declaration by the leaders of 27 Member States, as well as the European Council, the European Parliament and the European Commission. Declaration of Rome of 25 March 2017. Download: http://www.consilium.europa.eu/fr/meetings/european-council/2017/03/25-rome-declaration_pdf/

9. According to the Eurobarometer 2016 (Brussels, 2016), 80% of European citizens are in favour of a European defence union, 80% would like greater efforts to promote democracy and human rights in the world, 77% in favour of environmental protection, 71% for immigration policy, 60% for energy.

Only by reenergising the integration process will it be possible to have a positive influence on the domestic agenda of those countries which, for the moment, remain outside, and to strengthen pro-European forces there.

Comparative studies of regional integration organisations elsewhere in the world (Telò 2016) confirm that, despite major differences, a deepening of hard cores is the way to reenergise regional cooperation. The Association of Southeast Asian Nations (ASEAN) is an illustration of this. In 2015, the 10 countries of the central core¹⁰ decided to enhance the ‘three (political, economic and socio-cultural) communities’, as well as consolidating a broader regional structure spreading out in concentric circles: ASEAN plus 1 (a free trade area (FTA) with China); ASEAN plus 3 (China, Japan and Korea, establishing, among other things, the Chang Mai Initiative, a joint regional fund); ASEAN plus 6 (ASEAN plus 3 plus New Zealand, Australia and India, giving rise to the Regional Comprehensive Economic Partnership (RCEP), which accounts for 28% of global GDP); and finally the ASEAN Regional Forum (to which the US and the EU are also invited) to discuss security issues. Similar trends can also be seen in Latin America and Africa.

Of course, if Europe is to have a structure based on concentric circles around a more political hard core, the leadership needs to be able to steer a course based on at least a twofold strategy. In parallel to the urgent need to create political hard cores and to consolidate the euro area, it will be necessary to relaunch integration between the 27 countries post-Brexit. This means completing and enhancing the Single Market (‘Monti Report’), as well as defending the exclusive powers in the key areas of competition and trade policy. Weakening competition policy would mean handing over control of the European market to the large multinationals. Paralyzing the common trade policy would mean amputating Europe’s most effective international tool and holding up global (World Trade Organisation) negotiations as well as interregional discussions (CETA, TTIP) and negotiations currently underway. These discussion and negotiations with many countries pertain to second-generation agreements related to issues such as social regulation, the environment, public services and dispute management. These agreements are the only way to export key elements of the European social model and to prevent Europe, its social standards and values, having to stand alone in the globalised economy. If the EU takes a protectionist, neomercantilist approach, it will miss the many extraordinary opportunities for growth and employment in Asia and the Pacific, the Americas and Africa, generated by Europe’s international competitiveness, its high-quality work and products, and the mistakes of the US.

Is multi-speed integration compatible with a social Europe? The feature shared by all three circles is social dialogue, which is not only a method: it has importance in its own right, reflecting and strengthening the social market economy. The agenda for this social dialogue, however, changes from one circle to the next, since not everything can be done by all 27 countries together. Of course, urgent social innovations will tend to come from the national level – but the EU can inform others of those national solutions which work best (dissemination).

10. ASEAN has 10 members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

The Commission's Communication of April 2017 proposes a solemn EU declaration on a European Pillar of Social Rights (see Bouget *et al.*; Sabato and Vanhercke in this volume), including a minimum wage in each Member State and an interpretative communication on the Working Time Directive. In addition, there could conceivably be greater convergence of other elements of national 'welfare states' (not daring to dream of an impossible European welfare state) (Vandenbroucke *et al.* 2014 and Vandenbroucke 2013). But, since the community method does not apply here¹¹, what if the Council refuses these proposals? In that case, the 19 could have as possible goals the consolidation of the euro area, its democratisation and the establishment of a eurozone social pillar. The constitution of a social Eurogroup (with a permanent Chair?) should make it possible to move towards a real 'social pillar' for the euro area. Moreover, if a group of States wished to go further, they could do so as a group of 9-15, focusing the enhanced cooperation on objectives on which there was no majority consensus in the Council, such as a large-scale plan on the most urgent social problem – youth unemployment (19.4% in 2016) – particularly by committing further to the 2013 'Youth Employment Initiative'¹².

The European Pillar of Social Rights should form part of an overall project or vision, with economic, social and cultural aspects.

The European trade union movement is clearly the force best able to prevent the further spread of a picture which is disastrous for democracy and for the EU: that of on-going conflict between a pro-European global elite, and the 'people', who are nationalist and protectionist. We must respond to the many extremist populist movements, which do not realise that nationalism and the end of the euro would inevitably lead to the impoverishment of the working classes. Yet any response will be weak unless it is both political and cultural. By way of example, the *Deutscher Gewerkschaftsbund* (DGB), an association of eight German sectoral unions, in its highly effective fight against the anti-Europe party, has rightly underlined the social and cultural nature of this conflict, which is also a struggle for more European integration, for peace, tolerance and memory, and against forgetting and historical revisionism¹³. The fact that the German far-right party, the AfD, unlike populist parties elsewhere, has not scored higher than 10% in opinion polls suggests that the DGB's effective anti-populist campaign could point the way forward for the whole European trade union movement.

11. The Commission and the EU do not have binding authority in the area of social policy: see, for example, the fiasco of the maternity leave directive in 2008 and the delay in revising the posted workers directive.

12. Other sectors proposed by Emmanuel Macron are: the digital sector, Erasmus extended to apprentices, industrial and antidumping policy (Macron 2016).

13. Deutscher Gewerkschaftsbund, www.allianz-fuer-welttoffenheit.de and Alliance for Tolerance, Solidarity, Democracy and Constitutional State – Against Prejudice, Hatred and Violence, 'Human Dignity shall be inviolable', a movement promoted by several prominent figures, in particular by R. Hoffmann, President of the DGB.

Conclusions: a new social movement for a differentiated and social Europe, a lever for regulated globalisation

The deep split in European public opinions between protectionist nationalism and pro-Europeanism also divides the unions. On the one side, the populists repeat, quite successfully, arguments about defending social achievements against immigrants and the EU: on the other, the trade union movement has known for decades that protectionist nationalism and the collapse of the euro would negatively impact both jobs and the purchasing power of their members. The EU will only be able to return to its progressive role, internally and externally, if it has the critical but convinced support of a strong and united trade union movement. The union movement, however, will only be able to take on this vast responsibility if it can call upon an overall vision for the Union, a vision adjusted to the serious internal challenges (how to combine social, economic and security objectives) as well as to global issues: the governance of globalisation.

Of course, jobs and higher wages are at the heart of trade union action in Europe, as levers for growth. Several countries show, however, how vital it is to look beyond purely economic factors. Austria, the Netherlands and Germany have above-average growth and below-average unemployment; nevertheless, extreme right-wing populism is present there. Our efforts are doomed to failure if employment policy is not presented by the trade union movement, and in general by the forces of progress, as one of the aspects of security policies addressing people's 'cultural' anxieties and need for protection (fear of uncertainty, need for identity, etc.). Social security is part of personal security when uncontrolled migration and other factors heighten fears. The opening up of Europe, to trade and to migration, is not tenable without rigorous and humane regulation of migratory flows, financing of public integration policies and regulation of world trade. The only way to limit the influence of nationalistic protectionism is to offer and create a Europe which protects workers from the negative consequences of unbridled globalisation. These are political priorities, but also priorities of identity; only they can rescue democracy and the welfare state, the European social model.

This chapter has referred to several facts which paint a different picture – not one of an inevitable victory for protectionist nationalism – which shows the strength of trends towards the emergence of a new form of Europeanism. The new German movement 'Pulse Europe' and the methods used by the DGB point to a possible way forward: they combine a call for a more social Europe with demands for security. Europe can perfectly well protect without being protectionist. The Scandinavian model, strongly and courageously open to trade while still emphasising social protection, is the continent's best practical example. The challenge is to apply this model to the eurozone and the EU, in the context of a dynamic and differentiated Europe, rejecting a suicidal dash to the lowest common denominator, and nurturing the resolve of countries which wish to move forward, in the interests of all.

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Chapter 2

Brexit, the UK labour market and the lessons for Social Europe

Daniel Clegg

Introduction

On 23 June 2016, the British people voted to leave the European Union (EU) by a narrow majority of 51.9% to 48.1%, on a high turnout of 72%. The vote for ‘Brexit’ was above all the consequence of a political gamble by former Prime Minister David Cameron that spectacularly, if somewhat predictably, backfired. But it also laid bare a simmering anger among large parts of the British population about the recent trajectory of the country’s social and economic development. This popular revolt against the established policy consensus occurred despite it often being argued – both domestically and by outside observers – that the UK had incrementally developed a more socially and economically virtuous policy mix than many of its European neighbours, notably because of its ‘inclusive’ labour markets and strong employment performance even in the face of the economic turbulence of the last decade. Brexit suggests a less sanguine reading of the integrative powers of flexible labour markets. While it is unlikely that departure from the EU will create the conditions for a reorientation of the British socio-economic model, there are nonetheless important lessons in Brexit – and potentially opportunities from it too – for the rest of Europe.

This chapter is organised in three parts. The first section recapitulates the chronology of the UK’s departure from the EU during 2016, a year that began with attempts to negotiate a new membership status for the UK and ended with political and legal wrangles around the terms of the country’s impending withdrawal. Section 2 reviews the debate that followed the June vote regarding the underlying causes of Brexit, particularly the weight of economically marginalised voters – the so-called ‘left behind’ – in the decision to leave the EU. It also shows that economic factors mattered for Brexit despite the UK’s apparently resilient labour market, and the absence of any meaningful aggregate-level association between high vote shares for Brexit and standard indicators of labour market performance. Section 3 elaborates on some implications of this analysis for future socio-economic reform priorities and assesses their post-Brexit prospects in both the UK and the wider EU.

1. Brexit is an amalgamation of the words ‘Britain’ and ‘Exit’, and was inspired by the similar term ‘Grexit’ first used in 2012 to describe the possibility of Greece leaving the Eurozone.

1. From the 'best of both worlds' to 'hard Brexit'

Bound by a promise first made by David Cameron in his Bloomberg speech in early 2013, the Conservative Party Manifesto for the 2015 general election pledged to negotiate a 'new settlement for Britain in Europe' and to put that agreement to the vote of the British people in an in-or-out referendum before the end of 2017. This was a concession to a vocal section of Conservative MPs, who were growing increasingly anxious about the rising popularity of the eurosceptic United Kingdom Independence Party (UKIP) (Copsey and Haughton 2014). As prior to the general election few senior Conservatives thought the party had any chance of winning an outright majority, and as it was evident that no putative coalition partner would ever join a government committed to an EU membership referendum, it seems likely that Cameron never actually expected to hold the vote. But after the Conservatives unexpectedly won an outright, if tiny, majority of 12 seats in the May 2015 election, 'real change in our relationship with the EU' suddenly ceased being mere political rhetoric and became official UK government policy.

By the start of 2016, the first phase in the process of securing this change – the negotiation with other Member States of a package of changes to the UK's terms of membership of the EU, – was reaching its climax. Following intense and arduous negotiations, at the European Council of 18-19 February the heads of state or government of the 28 Member States agreed to a set of new arrangements in line with the Treaties, though in some cases requiring amendments to secondary legislation, designed to allay particular concerns that had been raised by the UK government. Some of these, like the UK's exemption from the objective of 'ever closer Union', were essentially symbolic. Others, like a renewed drive to reduce regulatory burdens and promote competitiveness, were not the object of significant disagreement. But Cameron did win some significant concessions in the face of opposition, for example on provisions to protect Member States remaining outside the Euro area – and, importantly from London's point of view, their financial services centres – from potentially 'discriminatory' consequences of developments in Eurozone economic governance.

By far the most contentious dossier in the renegotiation related to access to social benefits for people exercising their rights of free movement (Clegg 2016). While this issue had not even been mentioned in Cameron's 2013 Bloomberg speech, in the local and European elections of May 2014 UKIP had made spectacular electoral gains after refocusing its campaign on the supposedly negative consequences of immigration (Ford and Goodwin 2014). Subsequently, the prospect of limiting the 'big financial incentive' that access to welfare benefits allegedly created for migration to the UK from elsewhere in the EU was increasingly sold by the Conservative Party as the central plank of their pre-referendum renegotiation strategy. Following the preparatory technical discussions in late 2015, the UK government's negotiating letter translated this general preoccupation into two key demands: (1) requiring a four-year period of residence for EU/EEA nationals to establish eligibility for in-work benefits and social housing and (2) limiting the ability of EU migrants to send child benefits abroad.

While these demands may have been precise and strictly bounded operationalisations of the objective of limiting access to social benefits for EU/EEA migrants, they clearly

violated the principle of equal treatment that underpins the free movement of workers in the EU. Furthermore, the governments of Poland and a number of other newer Member States considered them a direct attack on their citizens, who had moved in great numbers to the UK for work since accession. Ultimately, the best the UK negotiators were able to obtain in this area was an agreement to change the approach to calculating the value of child benefits where a dependent child is resident in another Member State (initially only for new claimants) and consensus on creating a new ‘emergency brake’ mechanism that would allow Member States facing particular migration pressures to limit access to some welfare benefits for newly arrived migrants. Unlike under the UK government proposals, however, access to these benefits would not initially be zero, even with the emergency brake in force, and instead entitlements would be phased in progressively to reach parity with nationals after four years.

David Cameron tried to present this agreement as the basis for a UK relationship with the EU that gave the country the ‘best of both worlds’ (Prime Minister’s Office 2016): retaining membership of Single Market and the benefits it brings to British citizens and businesses, but restricting reciprocal obligations to other EU citizens that the British electorate found distasteful. However, it was difficult for the UK Government to reconcile its ‘game changing’ presentation of the renegotiation with the concessions it had won – and was ever likely to win – from other Member States (Thompson 2017). The concessions were real, hard won, and went in a direction likely to be popular with UK voters, but it was implausible to claim that the UK’s relationship with the EU would be fundamentally transformed if they were implemented (Glencross 2016: 30) a fact that a hostile domestic press was not slow to point out.

The government arguably also made a strategic error in trying to counter UKIP’s politicisation of the migration issue by putting it at the centre of the renegotiation and linking it to social rights for intra-European migrant workers. Social rights for migrants within the EU has long been a controversial issue well beyond the UK, and the government could reasonably think it was an area where opinion at European level was moving towards a more restrictive position, as illustrated by high-profile Court of Justice rulings such as *Dano v Jobcenter Leipzig* (C-333/13, 11 November 2014)². However, the evidence that the accessibility or generosity of social benefits plays a significant role in migration decisions has always been very thin (Geddes and Hadj-Abdou 2016). Despite this, eurosceptics used the government’s campaign platform to portray the deal as a manifestly inadequate way of tackling what everyone now seemed to agree was the key ‘problem’ with Britain’s EU membership, namely free access to the UK labour market for workers from other Member States. To limit inward migration, they were able to argue, the only effective approach was to ‘take back control’ of UK immigration policy.

On 20 February 2016, the day after the new settlement was finalised, Cameron announced that the referendum on the UK’s EU membership would be held only four months later, on 23 June. This date was far earlier than the government was bound to by its manifesto

2. In this case the Court of Justice confirmed the legality of the decision by a social security agency in Leipzig (Germany) to deny social assistance benefits to an economically inactive Romanian national resident in the city. The judgement appeared to row-back on some earlier CJEU case law, and was widely interpreted as a restrictive ruling designed to allay mounting concerns about ‘benefit tourism’ across the EU.

commitment. The government seems to have reasoned – partly based on the precedent of the Scottish independence referendum in 2014 – that a long referendum campaign would favour opponents of the status quo and thus make a Brexit vote more likely. As UKIP had spent much of 2015 on the verge of civil war over both its leadership and its future electoral strategy (Goodwin and Milazzo 2015), a snap referendum also held the possibility of depriving the eurosceptics of any charismatic figureheads.

This hope was dashed when Boris Johnson, the high-profile, telegenic mayor of London, declared his intention to campaign for Brexit the day after the date for the referendum was announced and against the official government position. This boost to the future ‘Leave’ campaign and the chance of a Brexit vote was reflected in the financial markets, where the pound instantly fell by 2.4% to its lowest level in seven years. Whether out of conviction, political calculation or both, ultimately a full quarter of David Cameron’s cabinet would campaign against the official government position of remaining in the EU, and many of those who formally supported the government – including future Prime Minister Theresa May – would keep an exceptionally low profile. Though also officially in favour of continued EU membership, the Labour Party would play an enigmatic role in the campaign due to a combination of (1) the ambivalence of new leader Jeremy Corbyn and his closest advisors towards European integration and (2) a strategic fear of alienating its electorate by campaigning too visibly alongside the government (Menon and Slater 2016). Unlike in the 1975 EU membership referendum, the Trades Union Congress (TUC) strongly supported continued membership, though a number of its affiliates adopted a neutral stance and some – such as the RMT railway union – supported Brexit (Gumbrell-McCormick and Hyman 2017).

Having failed to secure support for EU membership even from much of the cabinet, the UK’s reformed relationship with the EU did not feature substantially in the argumentation of the ‘Remain’ campaign, which focused overwhelmingly on the economic dangers of leaving the EU – reprising ‘Project Fear’ that had narrowly prevailed in the Scottish independence referendum of 2014. The campaign for Leave was less organisationally cohesive or controlled in its messaging, but over time increasingly also focused on the core argument of immigration control. In a classically populist vein, this emphasis on immigration was complemented with explicit mobilisation of ‘ordinary people’ against ‘elites’ and ‘experts’. With the status of evidence called into question, the campaign inevitably became more emotional, playing into the hands of Brexit campaigners who made simple but powerful appeals to ‘take back control’. Having at no point attempted to articulate a genuinely positive case for European integration or cooperation, which in any case would have sounded somewhat strange on David Cameron’s lips given his longstanding criticism of the EU, the Remain side had very little to offer in return.

Despite the fatal weakness of the government strategy and the Remain campaign seeming obvious with hindsight, and with the polling data suggesting the status quo would prevail, the narrow vote for Brexit on 23 June 2016 nonetheless came as a major surprise. In Brussels and other European capitals, the reaction was one of disbelief and the mood a mixture of doom and determination. In the UK, meanwhile, the political and economic upheaval was instant. Cameron announced his intention to resign as Conservative leader and Prime Minister after a replacement had been named, while a

slew of Labour MPs also resigned their seats in protest against what they presented as the lacklustre campaign led by Jeremy Corbyn. The London Stock Exchange plunged by 8%, the pound sterling fell to its lowest level against the dollar in over 30 years, and major rating agencies queued up to downgrade the UK's credit status.

It was only after the end of Parliament's 2016 summer recess that the task of working towards some form of British exit from the EU began in earnest. By that time, it was clear that direction of this task would fall to Theresa May, Home Secretary since the election of the coalition government in 2010, who prevailed over a number of more open Brexit supporters in the Conservative leadership contest. To widespread surprise, her first cabinet appointments were nonetheless Conservatives who had been extremely vocal in support of leaving the EU, including Boris Johnson as Foreign Secretary and the historically eurosceptic David Davis as the new Minister for Exiting the European Union. With these appointments, May put the most strategically significant posts in the forthcoming Brexit negotiations in the hands of arch 'Brexiters'. What this implied about May's own views on how Britain's relationship with the EU should be recast was not clear, as she would say little on the subject beyond 'Brexit means Brexit'.

As winter approached, however, it became increasingly evident that it was unlikely that any arrangement compatible with the UK's continued membership of the Single Market – such as European Economic Area (EEA) status – would be deemed respectful of the supposed will of the British people. This was notably due to the continued overriding focus on immigration control, a goal that Theresa May had also doggedly pursued – to the reported exasperation of George Osborne at the Treasury – in her long stint as Home Secretary (*The Financial Times* 2016). Though May had formally supported Remain, her government appeared to be preparing to make a more radical break with the EU than even many explicit pro-Brexit campaigners had sought. As the prospect of this 'hard Brexit' took shape, the currency – which had rallied over the summer – plummeted to new depths.

As the implications of such a Brexit sunk in, opponents mobilised to try and stop it, notably through the courts. Following a crowd-funded legal challenge by a UK citizen, in November the High Court judged that the government could not trigger Article 50 of the Treaty on European Union – starting the process of formally leaving the EU – without consulting Parliament. But the furious reaction in the media, where the judges who ruled on the case were labelled 'enemies of the people', and from the government, which announced its intention to appeal the ruling, underscored the determination of the forces behind Brexit. The UK government would trigger the process of leaving the EU by the end of March 2017 as Theresa May had announced, and it is likely that the eventual change in the UK's relationship with the EU will be a very profound one.

2. The Brexit vote, the 'Left Behind' and the UK labour market

With such a narrow margin of victory (51.9% to 48.1%), the vote for Brexit revealed a highly divided country on the issue of European integration. National divisions were most visibly manifest, with Scotland and Northern Ireland voting strongly for Remain, while England and Wales returned clear Leave majorities. Within the nations of the UK

there was, of course, also substantial variation between regions: in England, voters in the West Midlands were 60% for Leave, while voters in London were 60% for Remain (see Uberoi 2016).

Within days of the vote, a variety of accounts began to appear in the media of what the victory for Leave revealed about contemporary Britain. More slowly, academic studies have also begun to shed more systematic light on the political sociology of Brexit. Analysis on the aggregate level, especially with the exclusion of Scotland, has shown that high Leave votes were more likely to be found in geographic areas with older populations, voters with low or no educational qualifications and in small ethnic minority populations (Goodwin and Heath 2016a). Immigration levels appear not to have been a significant determinant of a Brexit vote, though areas which experienced rapid increases in inward migration in recent years were more likely to have voted Leave. While recent changes in average wage rates had little explanatory power with respect to vote choice in the referendum, structurally lower average wages appeared to characterise areas with large majorities for Leave (Clarke and Whittaker 2016). The picture that emerged was of chronically economically depressed areas of the country voting to leave the EU, especially when they had experienced recent sudden changes in the composition of the local population.

Analysis of individual level data underscored the crucial importance for Leave voting of being older, white, poorer and less educated, but was also able to add insight into the role of individual attitudes and values (Goodwin and Heath 2016b). Far more than self-positioning on a traditional left-right scale, holding socially conservative or 'authoritarian' values appears to have predisposed individuals to a vote for Brexit, just as this explains much electoral support for populist political offers more broadly (Inglehart and Norris 2016, Swales 2016). While this observation initiated a debate into the respective relative importance of the cultural and socio-economic drivers of Brexit (Kaufmann 2016), these dimensions are at least to some extent correlated, and both were clearly significant. Their interaction can nonetheless at times be counter-intuitive: one of the single strongest attitudinal determinants of a Leave vote was being hostile to welfare (Swales 2016: 16) despite socio-economic disadvantage simultaneously being a strong predictor of individuals voting for Leave.

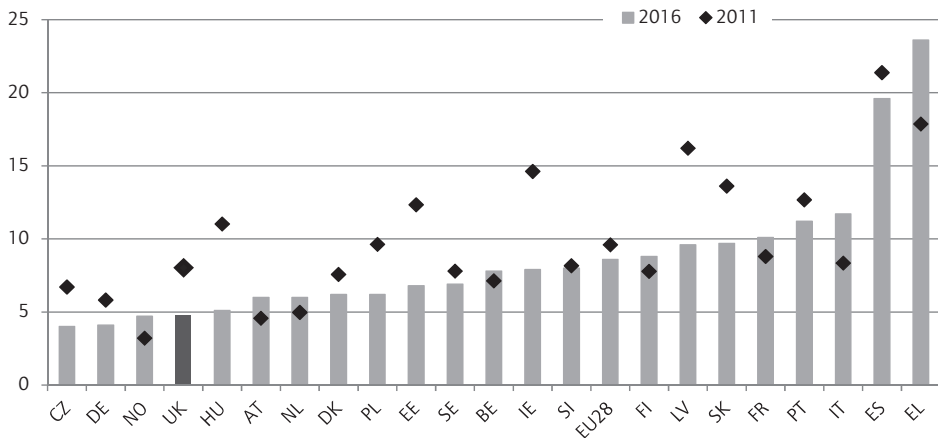
Media commentary and academic analysis has ultimately coalesced in characterising a key part of the Brexit constituency as 'the left behind', a catch-all concept that works equally well for areas as for individuals in both cultural dislocation and economic disadvantage. In these respects, it is similar to the concept of 'the losers of globalisation' (*les perdants de la mondialisation*), positioning the Brexit vote as a reaction to threats to social cohesion and stability that have come to be seen as a downside of recent trajectories of social and economic development across Europe and the developed world (Hobalt 2016; Hopkin 2017).

From the perspective of the wider European debate, however, one factor has been strikingly absent from most discussion of the importance of the left behind for the Brexit vote: unemployment. Particularly since the economic crisis, if there is one single factor that in European policy circles is seen as a proxy for the plight of the losers of

globalisation, it is unemployment. A common reading of the historiography of the Great Depression of the 1930s stresses the tight link between high unemployment and the rise of support for extremist, illiberal political movements (*e.g.* Kowall and Linder 2017). It remains a core assumption of policy making in rich countries that ‘work is the best safeguard against exclusion’ (OECD 2017: 12).

At first glance, however, Brexit is a puzzle for conventional understanding of the role of unemployment in fuelling political anger and alienation. From a comparative perspective, the UK has low unemployment and recovered quickly from the peak – also relatively low – of unemployment following the financial and economic crisis (Figure 1). In the months ahead of the referendum, UK unemployment dipped below 5%, falling to its lowest level in a decade. Nor is this a story of rising economic inactivity, which has been associated with the success of ‘toxic populist politics’ in the United States (Summers 2016); economic inactivity has been falling in the UK while it has been rising on the other side of the Atlantic (Corlett and Gregg 2015). The UK now has a comparatively high employment rate, not at the level of the Netherlands or the Nordic countries perhaps, but far above many Continental European economies.

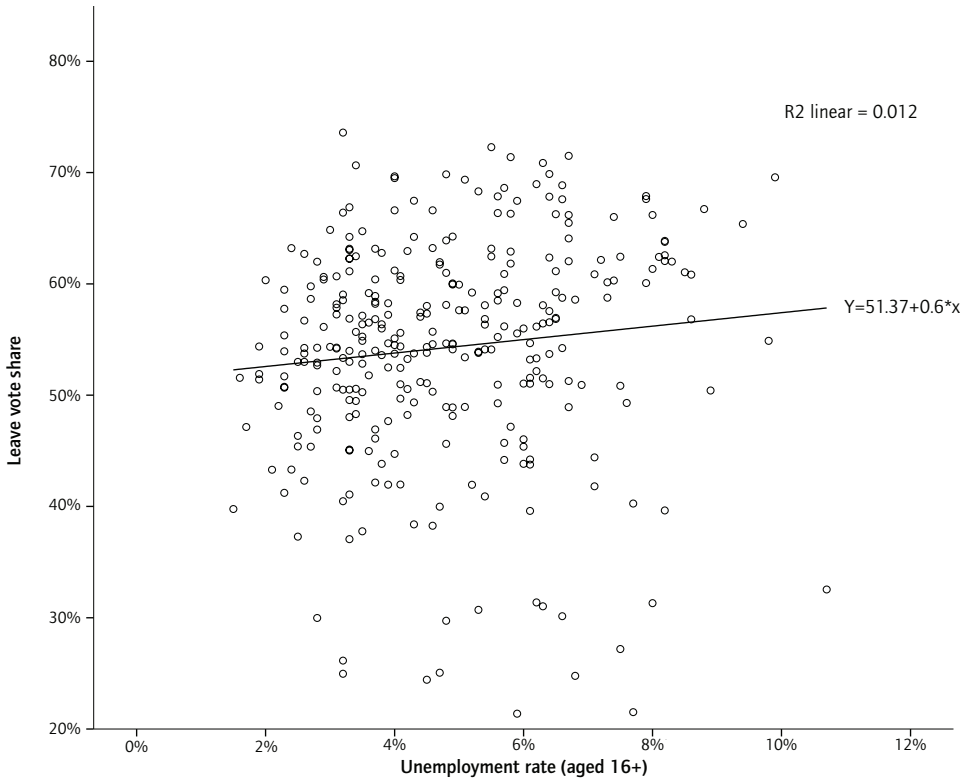
Figure 1 Unemployment rates 2011 and 2016, European Union countries



Source: Eurostat.

Local-level data confirms the absence of a meaningful relationship between unemployment and the Leave vote, even when the outlying case of Scotland is excluded (see Figure 2). Some of the regions with the lowest unemployment rates in the country, such as the East Midlands and the East of England, recorded the highest votes for Brexit. Furthermore, unemployment had been falling steadily in these areas in the run-up to the vote. The picture is largely the same for employment indicators, although Clarke and Whittaker (2016) do find a modest negative relationship between a high employment rate and the Leave vote if student employment is excluded from the analysis. All in all, though, there seems to be little that relates the conventional and most widely-used indicators for the health of the labour market with the outcome of the referendum.

Figure 2 Local authority leave vote share by unemployment rate, UK excluding Scotland



Source: Calculations from Electoral Commission (local authority vote shares in EU referendum) and Nomis (local authority unemployment rate)

What conclusions should we draw from this? Perhaps we should reason, like the former deputy Prime Minister of Poland, Jacek Rostowski, that the ‘social democratic’ explanation for the rise of anti-system sentiment is simply wrong, and that the common factor behind the Brexit vote in the UK and the electoral success of the Law and Justice party in Poland is rather that the two countries are ‘doing well’ in comparative perspective, emboldening voters to give populist solutions a chance (Rostowski 2016). This argument, however, not only contradicts the state-of-the-art studies of populist electoral success (Inglehart and Norris 2016), but also flies in the face of the aggregate- and individual-level data discussed above that links the Leave vote in the UK to indicators of labour market disadvantage other than unemployment, including low wages and incomes and lower levels of skills and education. As the UK has seen greater in median real wages since 2008 than all but three EU countries (OECD 2016) it also stretches credence to describe it as a country that is ‘doing well’, irrespective of other aspects of its economic and labour market performance.

Following from this, a more reasonable inference seems to be that the most commonly used headline indicators of labour market performance are simply no longer very

useful short hands for the health of the labour market, at least not in a country like the UK. Since the mid-1990s international comparisons have tended to focus mainly on employment rates, given well-known problems of interpretation when comparing unemployment rates across countries with very different patterns of participation among different sexes and age cohorts. Rightly, a high employment rate is considered a better proxy for an inclusive labour market than a low unemployment rate (Eichhorst and Hemerijck 2010). But in and of itself the employment rate remains quite a thin indicator of labour market inclusivity (Brandolini and Viviano 2015). For the purposes of employment statistics, someone is considered employed even if (s)he has only worked one hour in the last week, which would be considerably closer to most common-sense understandings of exclusion from the workforce than to full inclusion in it. Likewise, the employment rate tells us nothing about income – a self-employed person who derives no income whatsoever from her/his economic activity in a given week is still considered employed. A high employment rate is perhaps a necessary condition for an inclusive labour market, but it can't be seen as a sufficient one.

This is particularly true in contexts where employment relationships have become increasingly de-standardised as a result of labour market change. These trends can be seen across Europe and the rest of the developed world, as they are in part driven by common dynamics such as shifts in the global division of labour, technological change, new corporate restructuring strategies and the declining power of trade unions. But they are particularly visible in the UK, where in the name of promoting employment the active disorganisation of the low-skill labour market has been a more-or-less explicit aim of public policy for at least two decades (Rubery *et al.* 2016). Since the restrictions on individual and collective employment rights in the 1980s, the UK has maintained one of the most deregulated labour markets in the EU, with employment protection as measured by the OECD's index averaging 1.2 on a scale of 1-5 for the last decade (Coulter 2016). In parallel, and especially since the late 1990s, a dual strategy of restricting out-of-work benefits while liberalising eligibility for in-work benefits has been pursued with the aim of reducing unemployment and inactivity while subsidising the expansion of low-intensity, low-paid and low-productivity work (Griggs *et al.* 2014). Though the emphasis placed on the stick of 'activation' relative to the carrot of 'making work pay' has varied over time and under different governments, policy changes have consistently expanded the definition of work that working-age benefit claimants must be incentivised to enter (Clegg 2015). In this sense, employment quality considerations have been systematically subordinated to the aim of reducing out-of-work benefit receipt.

In relation to its proximate aims, this policy strategy was arguably a success, boosting employment while also – at least under the New Labour administrations – contributing to non-negligible reductions in poverty, particularly in households with children. But it has always been an at least implicit part the UK's employment promotion strategy that its benefits would be wider than this: the promotion of paid work was meant to play an 'integrative' function (Levitas 1998), both for individuals and for society as a whole. Following Bailey (2016), however, it is arguable that much employment in the contemporary UK labour market is itself exclusionary. He shows that as many as one in three adults of working age in the UK are in employment that fails to protect

them from poverty, leaves them vulnerable to job loss or is unrewarding and harmful to health and wellbeing. Moreover, for around a third of these people this is a durable situation, as they report no progress in their employment situation in the last five years. This highlights the logical flaw in advocating the integrative virtues of paid work while pursuing policies that undermine employment norms and standards.

For many years, labour market policy reform discourse in the UK has focused attention on the divide between workers and the workless. Labour market deregulation, activation and making any work pay have been presented as routes to job creation, the reduction of insider-outsider cleavages and thus wider socio-economic inclusion. The adverse effects these policies have had on broader norms and standards of employment have been considered as a price worth paying for making sure that nobody is left behind by being locked out of work altogether. The impressive rebound in employment in the UK after the 2008 financial crisis was celebrated by many, even when recognising that it went along with widespread wage stagnation and sharp rises in (involuntary) part-time and (often also involuntary and sometimes arguably ‘phoney’) self-employment – flexible labour markets help to ‘democratise’ the pain of economic adjustment and shocks, meaning harms are less concentrated and thus less damaging in the long run (see e.g. Portes 2012). But this begs the rhetorical question: from the point of view of political stability in democracy, does sharing harm more widely really make it less damaging?

Antonucci *et al.* (2017) have criticised the narrative of the ‘left-behind’ Brexit voter, emphasising the substantial vote share for leaving the EU among a ‘squeezed middle’ of Britons with intermediate levels of education, typical employment biographies and who self-identify as middle class – in short, groups that would often be classified as ‘insiders’ – but who also perceive their personal economic situation to be in decline. This terminological objection, however, seems to be premised on an assumption that those with conventional insider characteristics cannot be, or feel, truly left behind. Particularly with respect to the characteristic of being employed, this is in fact a similar assumption to the one that has justified more than three decades of deregulatory and activating labour market reforms in the UK. Arguably the key lesson that should be drawn from the socio-economic stratification of voting behaviour in the referendum is that this assumption is wrong. Despite and to an extent because of the UK’s successes in employment promotion, many working Britons feel insecure, unrewarded and like they are not sharing in general economic progress. Their malaise was expressed through their vote for Brexit – the long-run social and economic harms from which may be very damaging indeed.

3. Reforming the British and European Social Models after Brexit?

A key lesson to draw from Brexit in the realm of social policy, then, is that an employment promotion strategy cannot deliver on its integrative promise – or indeed on some of its other promises, such as boosting tax revenues and reducing demand for fiscal transfers (Rubery *et al.* 2016) – if employment quality considerations are totally subordinated to it. This is important because although job quality has been an official objective of European employment policy since the launch of the European Employment Strategy in

1997, from the early 2000s it became fairly apparent that quantitative objectives were largely taking precedence over qualitative ones on both domestic and European levels – in other words, that elsewhere in Europe and in EU policy coordination employment quality considerations have been to some extent subordinated to employment promotion goals too (Raveaud 2007). This has remained largely the case in more recent policy, though perhaps in part because of the rise in unemployment across the EU since the economic crisis.

What might a more balanced approach entail? In part, there is a need for a more evidence-based debate on the effects and contemporary role of labour market regulation. Though policy advice in Brussels and European capitals still frequently foregrounds the purportedly negative effects of employment protection, thereby driving a deregulatory reform agenda, the evidence that regulation is harmful to employment or increases labour market segmentation is far from compelling (Myant and Piasna 2017). As proponents of so-called ‘predistribution’ observe (Chwalisz and Diamond 2015), regulation is also a particularly useful tool for shaping market outcomes in times where both public finances and inter-group solidarity are strained.

The importance of social security in the promotion of decent work should not however be neglected. Far from being mere instruments of redistribution or insurance, as they are portrayed by predistribution advocates, social security policies in general, and unemployment insurance policies in particular, were historically just as much about underwriting and institutionalising norms of appropriateness around employment relationships – in other words, about the regulation of the labour market. It is important to reaffirm that, notwithstanding efforts in social security policy to make work pay or to activate those in receipt of out-of-work benefits, helping to uphold norms and standards in the labour market remains a legitimate and desirable function of social security. There is in any case no logic in stating a commitment to improved job quality while advocating social security policies which work against this aim. As social protection not only responds to but also structures patterns of labour market risk, there needs to be a more explicit discussion in social security policy about the types of work we want to promote and about better integrating social security issues in the job quality agenda.

But are there realistic prospects for this kind of turn in dominant social and labour market policy thinking in the wake of the Brexit vote? Perhaps paradoxically, the place where this seems least likely is the UK itself. Though swift action on interest rates by the Bank of England and a relaxation of deficit reduction targets helped to stabilise the UK economy following the June vote, with a ‘hard Brexit’ looming, the country’s economic prospects look decidedly uncertain (TUC 2016a). Economic stagnation and upward pressure on unemployment is likely to create the least favourable of climates for attempting to forge a compromise on bolstering employment rights and social protection. Indeed, if the UK economy suffers from its firms being locked out of the Single Market, pressures will inevitably grow for UK governments to seek competitive advantage through downward regulatory competition. Theresa May has already brandished the threat of the UK making social dumping an explicit economic strategy if other Member States were to seek to ‘punish’ the UK for Brexit.

Furthermore, many employment rights that British workers enjoy are either underpinned by or flow directly from EU law (TUC 2016b). The UK government may have pledged to convert the *acquis* of EU membership wholesale into British law, but this says nothing about how these domestic laws may be modified in the longer term. Given how hard they were fought by UK governments and how bitterly they remain contested by influential sections of UK business, there are reasons to be pessimistic about certain employment rights – in the areas of working time or rights for agency workers, for example – surviving in their current form following repatriation.

In this area, much will depend on the changing balance of domestic political forces. At present, political alignments do not seem so unfavourable to workers' rights. Theresa May has signalled her intention to govern from the centre, and repeatedly stated her commitment to improving the lot of Britons who are 'just about managing'. In October 2016, her government launched a Commission on Modern Employment Practices headed by Matthew Taylor, a former chief policy advisor to Tony Blair, with an explicit remit to promote a new balance between flexibility and social and employment rights and protections (UK Government 2016). Even before the Brexit vote, the previous Conservative government had introduced the first of a planned series of substantial increases in the UK minimum wage, rebranded a 'National Living Wage' – albeit alongside a package of swingeing cuts to both out-of-work and in-work social security benefits.

This hints at a deeper challenge facing any social justice agenda in the UK – the strength of anti-welfare sentiment among large parts of the British population, including and perhaps especially among those who feel 'left behind'. This has been stoked by successive governments using the opposition between 'hard working people' and benefit claimants to provide political cover for welfare state restructuring (Deeming 2015). As noted above, hostility to welfare was one of the strongest attitudinal predictors of a vote for Brexit. This deep contradiction between the strong demand for enhanced security and the equally strong rejection of many of the key policies that could deliver this will be exceptionally complicated for any UK government to manage.

In this respect, at least, the prospects for reorienting social models in the wake of Brexit look better in many other parts of the EU. Most other European countries have much stronger social insurance traditions than the UK, meaning that attempts to play on divisions between workers and welfare claimants have inherently less traction. The stronger involvement, in many countries, of the social partners in the governance and reform of social security acts as a safeguard against this risk too. This also creates institutional capacity, in principle, for better articulation of policy reform in the realms of employment protection and social security. In sum, against a recent tendency to portray robust social insurance traditions as a constraint on social model reform, it should be acknowledged that in crucial respects they are also a valuable resource.

The return, if still timid, of more solid growth across the Eurozone provides another reason for guarded optimism. Exploitation of interconnections between the recognised need for strengthening economic governance in the Eurozone and the EU social agenda may also provide the EU with greater leverage in social policy areas that remain a

national competence, as recent debates over shared unemployment insurance suggest (Andor 2016). Policy makers at European level have also not been totally deaf to the growing discontent with austerity and the pro-market emphasis of recent EU policy. This in part explains some of the steps taken to ‘socialize’ economic governance tools like the European Semester (Zeitlin and Vanhercke 2017) as well as the recent high-profile proposal for the creation of a European Pillar of Social Rights (see also Sabato and Vanhercke in this volume). Brexit furthermore eliminates perhaps the most severe case of operational and ideological inconsistency between such proposals and domestic policies (see e.g. McKeever and Simpson 2017 on European unemployment insurance); the relative exceptionalism of the UK welfare model in a European context has always been rather hard to reconcile with measures premised on stronger social insurance traditions, and Britain has long been the strongest advocate of a pro-market vision of the EU (Hopkin 2017). More generally, even if it is likely that a number of other Member States have been quietly content for the UK to do the ‘dirty work’ of opposing a strong social dimension, the withdrawal of the UK also means the removal of the most high-profile obstacle in recent years to new social legislation at European level.

It is important not to overstate the opportunities afforded by Brexit, however. If the UK does seek to secure competitive advantage by reducing rights for workers, a wider process of competitive social dumping could potentially be initiated across Europe (Gumbrell-McCormick and Hyman 2017). Anti-immigrant sentiment also remains very high across the EU, and right-wing populist parties armed with simple if chimeric policy messages about improving economic security are poised to exploit it. Meanwhile, proposals to address these issues from within the pro-European mainstream still seem to be hampered by the apparently dogged unwillingness to turn away from aspects of the current policy consensus. For example, while the recently published Commission communication on the Pillar of Social Rights devotes a full chapter to ‘fair working conditions’, the third sentence of the chapter makes reference to the need to ensure flexibility for employers to adapt swiftly to changes in economic conditions. Moreover, when referring to rights to unemployment benefits and minimum income (‘key principles’ 13 and 14), these rights are explicitly qualified with reference to the maintenance of incentives to work (European Commission 2017). Though Brexit is a massive wake-up call for the EU, it thus remains quite unclear where it will lead for Britain or the EU, in this area as others. Much depends of course on the Brexit negotiations that lie ahead, but perhaps more importantly on the capacity of pro-Europeans across the continent to articulate and work towards a credible vision for labour market reform that goes beyond employment promotion alone.

Conclusions

The UK’s vote to leave the European Union was not inevitable. David Cameron did not need to hold a referendum; high profile Conservative ministers might not have joined and lent credibility to the Leave campaign; and under different leadership the Labour Party might have made the social democratic case for continued EU membership more effectively. Once the referendum was announced, however, there was always a strong possibility that a vote for Brexit would be the outcome. As the success of populist parties

across Europe has shown, the EU is an ideal scapegoat for wider anti-system sentiments, and after years of post-crisis austerity set against a longer backdrop of rising inequality and profound economic transformation such sentiments abound.

Widespread discontent with the socio-economic status quo – the revolt of the left behind – was an important factor in the UK's vote for Brexit. As has been discussed above, this was despite the fact that the referendum took place with employment in the UK at record levels. The UK's labour market policy mix, combining deregulation, activation and making work pay, has been repeatedly justified as democratising economic opportunity by making labour markets more inclusive. What it instead appears to have done is to diffuse vulnerability and insecurity such that a large part of the British working population today feels left behind. Sharing the pain of economic adjustment and shocks may sound like a laudable objective, but unless it can be shown that burdens are genuinely being fairly shouldered by all in society then the most likely consequence is even more widespread resentment. In this sense, the UK's employment promotion strategy arguably led to broader and more explosive social divisions than the ones it appears to have helped resolve.

That the rise of anti-establishment sentiment across Europe calls for a stronger social dimension to European integration appears to have been understood, judging by initiatives such as the European Pillar of Social Rights. But what Brexit seems to suggest as needed is also a rather *different* social dimension to European integration than that which has prevailed for the last two decades. The overriding emphasis in European social and labour market policy in this period has been on employment promotion, with other considerations remaining very much in its shadow. European social policy coordination often seems to exhort other Member States to go as far in such agendas as activation and making work pay as the UK has done, while the emphasis on reducing segmentation between 'insiders' and 'outsiders' in European labour markets frequently degenerates into calls for outright deregulation.

If the lessons of Brexit are generalizable, then the empowerment of the EU to better drive a social dimension that remains rooted in the current employment promotion paradigm may only heighten the risks of Brexit contagion and, ultimately, the wider disintegration of the EU. If, alternatively, the Brexit shock can be a stimulus for attempts to articulate and support a 'thicker' approach to the promotion of socio-economic inclusion at European level, then it may still be the starting point for a virtuous circle of further integration and enhanced popular legitimacy. All that is at present clear is that the stakes are exceptionally high and serious reflection on the social and social policy determinants of Brexit is indispensable.

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Chapter 3

Europe and the migration crisis: migrants' rights sacrificed on the altar of security?

Dalila Ghailani

Introduction

According to the International Organization for Migration (IOM), 387,789 people reached the territory of the European Union (EU) in 2016, mainly by crossing the Mediterranean. Although this figure is high, it is considerably lower than in 2015 when more than a million migrants arrived on European soil (IOM 2016 and 2017). The crisis, however, is still far from over. For almost three years, Europe has been confronted with an influx of migrants, and, comparing 2016 to the years prior to 2014, there is an upwards trend. While the number of refugees fell steeply in 2016, the number of people dying or disappearing in the course of migration increased compared to 2015. With a total of 5,143 deaths in 2016¹ (compared to 3,784 in 2015²), the Mediterranean Sea has become the world's most dangerous migration route (Cogolati 2016).

This influx of migrants, unprecedented since the Second World War, has forced the European Union to adopt a series of measures following on from the European Agenda on Migration (2015) (Hassel and Wagner 2016). These are intended to crack down on the trafficking of migrants and to ensure that people are returned to whence they came (Council of the European Union 2015; European Commission 2015), but also to tighten controls on external borders and to transfer responsibility for dealing with arrivals to neighbouring countries. The recurring tragedies along the coasts of Greece and Italy, and the suffering endured by those seeking refuge in the EU by crossing the Mediterranean, raise the question of whether European migration policy respects human rights, particularly the principle of non-refoulement (Cogolati 2016), the cornerstone of the international legal regime to protect refugees.

This chapter examines, from a human rights viewpoint, some of the measures adopted in 2016 by the EU and the Member States to manage the influx of refugees and asylum-seekers (cf. Box 1). We begin by considering the lack of legal entry routes into the EU, highlighting Europe's responsibility for the human tragedies witnessed in recent years, the implications for the right to life, and the efforts undertaken by the EU to protect this right (Section 1). In Section 2, we look at the relocation programme set up in 2015 and continued in 2016 without much success. This programme revealed serious divisions between the Member States, and raised many human rights concerns, particularly

1. <http://migration.iom.int/europe/>
2. <https://missingmigrants.iom.int/mediterranean>

as to practices in the so-called ‘hotspots’³. 2016 was also the year when management of the refugee crisis was outsourced, with the EU-Turkey agreement – a significant turning-point in EU asylum policy – being signed on 18 March. In Section 3, we analyse this disputable and disputed agreement. The EU also continued to focus on security, taking new measures to control its external borders. The mandate for the Frontex agency shows a wish to give absolute priority to enhancing security, to the detriment of migrants’ rights (Section 4). Finally, we close this chapter by reviewing the various reform proposals from the European Commission, intended to create a lasting and fair common European asylum system (Section 5). The chapter concludes that the priority given to security too often goes hand in hand with violations of migrants’ fundamental rights, and that the path to an asylum regime which respects these rights will be long and fraught with possible pitfalls.

Box 1 Terminology

A **refugee** is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or, owing to such fear, is unwilling to return to it (1951 Geneva Convention on the Status of Refugees).

There is no legally-recognised definition of the term ‘**migrant**’. Nevertheless, according to the United Nations, this term refers to ‘anyone who changes his or her country of usual residence for more than a year, irrespective of the, voluntary or involuntary, reason for migration, and of his or her legal status’. The term therefore applies to people who move to another country or region in order to improve their material and social circumstances, their future prospects, or those of their family.

An **asylum seeker** is a person who requests entry to the territory of another country as a refugee, and is waiting for the competent authorities to decide on his or her application. If the application is rejected, the person must leave the territory of that State: he may be deported, in the same way as any foreigner illegally in the country, unless he is granted a residence permit for humanitarian or other reasons.

Source: United Nations, <https://refugeesmigrants.un.org/fr/definitions>

1. The absence of legal channels for entry into Europe

Within the EU, asylum is not dealt with as a separate issue, but as part of a more general objective to manage migration. This objective is based on the clear, unquestionable determination of the EU and its Member States to hold up and deter the mass arrival of migrants (Tissier-Raffin 2015).

In recent years, there has been a significant increase in the use of dangerous routes to reach Europe, crossing the central Mediterranean or via the Balkans. This has

3. A *hotspot* is one way chosen by the EU to improve procedures for identifying, registering and taking digital fingerprints of migrants on their arrival. There are ‘hotspots’ in Italy and Greece, among other places. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_fr.pdf

come with large-scale violations of the right to life (Cogolati *et al.* 2015). According to the International Organization for Migration (IOM), in 2016 5,143 people died or disappeared at sea⁴ (compared with 3,784 in 2015⁵) while trying to reach Europe on overloaded boats provided by unscrupulous smugglers. This is often, sadly, the only option left to refugees seeking security, who thus put themselves at greater risk of abuse, violence and exploitation (FRA 2016). Yet the right to life is a fundamental human right guaranteed by, *inter alia*, Article 2 of the ECHR and the Charter of Fundamental Rights. As this is an inherent human right, States must take positive preventive measures, within their powers, to protect it in cases where life may foreseeably be lost and where they can prevent such loss. The efforts made to protect migrants' right to life, through the *Mare Nostrum* and *Triton* operations⁶, were certainly laudable, but still insufficient (Crépeau and Purkey 2016).

The lack of a formal migration channel meeting humanitarian needs and protecting individuals fleeing crisis situations is a key factor in explaining why migrants embark on such dangerous journeys. The UN Special Rapporteur on the human rights of migrants (Crépeau 2015) rightly emphasised that 'the European Union's collective response to the Syrian crisis exposes a remarkably intransigent refusal to offer Syrians any significant migration opportunities. Most European Union Member States have preferred to look the other way, unsurprisingly pushing migrants to turn to smugglers'.

If more legal channels were available to reach the EU, refugees not effectively protected in their countries of origin could reach safety without having to risk their lives or use the services of traffickers. The potential legal channels include resettlement and family reunification.

1.1 The resettlement of refugees: promises difficult to keep

The resettlement of displaced persons in non-European countries is a standard way of helping recognised refugees to rebuild their lives without having to risk dangerous journeys. It is also an expression of solidarity with countries of first arrival that are bearing a disproportionate responsibility in hosting refugees and asylum seekers (HRW 2016a). In July 2015, the EU adopted a programme intended to resettle 22,504 refugees⁷ designated by the UN High Commissioner for Refugees (HCR) in 27 Member States⁸ over a two-year period (Justice and Home Affairs Council 2015). Despite the efforts made, the EU has a poor record in this area, given its capacities and the needs to be met. By late December 2016, 13,887 refugees had been resettled⁹, most of them Syrians from

4. <http://migration.iom.int/europe/>

5. <https://missingmigrants.iom.int/mediterranean>

6. Operation *Mare Nostrum* was a military and humanitarian operation conducted by the Italian navy as of 15 October 2013, following the Lampedusa tragedy. Operation *Triton* is an operation conducted by the European agency Frontex since November 2014, and is supposed to help Italy to cope with the influx of migrants via the sea.

7. This figure seems tiny, given that, according to the HCR, 1.15 million people across the world needed resettlement in 2016, and 1.19 million will need it in 2017 (UNHCR 2015 and 2016a).

8. Hungary refused to take part in the programme. However, Iceland, Liechtenstein, Norway and Switzerland are participating.

9. 13,998 people by 7 April 2017 (European Commission 2017a).

the Lebanon, Jordan and Turkey¹⁰ (European Commission 2016a). This was below the original commitment, but what was particularly striking were the disparities between states: non-EU EEA states (CH, NO, LI, IS) took in large numbers, as did Austria, Sweden and the United Kingdom. However, ten Member States, principally Central and Eastern European countries (SK, SL, RO, BG, HU, CY, HR, MT, PL) had still not taken in a single refugee (Forum Réfugiés-Cosi 2016a) ten months after the launch of the programme.

On 13 July 2016, the European Commission published a proposal for a regulation establishing a common EU resettlement framework, to ‘ensure orderly and safe pathways to Europe for persons in need of international protection’ (European Commission 2016b). This procedure would be based on the adoption of an annual resettlement plan, setting out the maximum number of people to be resettled during the following year in the whole of the EU, as well as details concerning Member State participation and geographical priorities. The decision on how many people to resettle in each Member State would, however, be taken by the States themselves. 10,000 Euros in financial assistance, to help finance reception and support for the migrants, would be paid to them for each person resettled (*ibid.*).

This proposal for a regulation contains some worrying provisions. For example, the decision as to the third countries from which resettlement would take place will be based, *inter alia*, on the effective cooperation of these governments with the EU in the area of asylum and migration. This corresponds to one of the objectives listed in the resettlement framework: to help achieve the Union’s foreign policy objectives by increasing the Union’s leverage *vis-à-vis* third countries. Making the resettlement options for refugees dependent on the degree to which their host country cooperates with EU interests is a distortion of the principle of sharing responsibility and of providing durable solutions to the most vulnerable refugees (HRW 2016a).

The proposal also excludes from possible resettlement anyone who has irregularly entered, irregularly stayed or attempted to irregularly enter the territory of the Member States during the five years prior to resettlement. The idea is to deter people needing protection from trying to enter Europe irregularly. This seems unrealistic, given the low number of resettlement places available compared to the number of displaced persons and refugees (Forum réfugiés-Cosi 2016a). The proposal also contains a clause excluding persons for whom there are reasonable grounds for considering that they are a danger to the community, public policy, security, public health or the international relations of the Member State examining the resettlement file, and authorising a Member State to effectively block the resettlement of an individual by another Member State.

While it is encouraging to see the EU creating a common legal framework for resettlement, Member States may well lack the necessary political resolve to implement it (Forum réfugiés-Cosi 2016a). The EU, which would like resettlement to be the only legal pathway to protection on its territory, will probably, therefore, establish a common

10. This figure includes the Syrians resettled from Turkey under the 2016 EU-Turkey agreement (see Section 4).

implementation framework, but without setting reception objectives¹¹ reflecting real protection requirements and the need for an international distribution of refugees (HRW 2016a).

1.2 Family reunification: a legal entry channel which suffers in times of crisis

Family reunification is another important legal pathway for entry into the EU for family members of people with an established need for international protection in the EU. This right developed in the light of international and European provisions which require States to promote, alongside family unity, family reunification, insofar as this is possible¹².

Restrictions on family reunification imposed on refugees and beneficiaries of subsidiary protection were increased in 2016 in some destination Member States such as Germany, Belgium, Finland, Denmark and Sweden. The inclusive family reunification policies of these countries were considered, wrongly according to the Council of Europe's Commissioner for Human Rights, to be pull-factors which should be subject to new restrictions and waiting periods to enhance integration capacity. As well as potentially offsetting the slight progress made in terms of resettlement, the question arises as to whether these restrictions comply with international and European law.

Box 2 Restrictions on family reunification in some Member States

In Austria, since 1 June 2016, refugees benefiting from subsidiary protection will have to wait three years before applying for family reunification, and must have suitable housing, health insurance and a sufficient income.

In Germany, in March 2016, facilitated family reunification was suspended for two years for people who were granted subsidiary protection after 17 March 2016.

Sweden has adopted a temporary law to suspend access to family reunification for asylum seekers with provisional protection until 2019.

Source: EMN 2017.

11. At the high-level Summit on Refugees held on 20 September 2016 by President Barack Obama, the President of the European Council, Donald Tusk, said merely that 'the final goal we are aiming at is that the refugees will get asylum in EU Member States through resettlement', without giving a quantified objective (Forum réfugiés-Cosi 2016a).

12. The family is recognised as the fundamental building-block of society, and family unity seen as an essential right of any person. The right to respect for family life is, in particular, guaranteed by the UN Convention on the rights of the child (Art. 9 & 10), the European Convention on Human Rights (Art.8), the European Social Charter (Art. 16 (general) and 19 (family of migrant (workers))) and the EU Charter of Fundamental Rights (Art.7).

Some provisions of the Dublin III regulation¹³ (European Parliament and Council of the European Union 2013a) can also help to maintain family unity by allowing family reunification for asylum seekers living in different EU Member States¹⁴. In January 2016, a British court, with reference to the regulation, authorised four minors, asylum seekers living in the ‘jungle’ in Calais, to join their family members in the United Kingdom, despite having lodged a request for asylum with the French authorities¹⁵ (EMN 2017).

However, if the amendment proposed by the European Commission (Article 3(3)) to the Dublin regulation is adopted, it will be more difficult for family members to join beneficiaries of protection living in another Member State, as this amendment will oblige the Member State where the application for asylum is first lodged to return the applicant to the first country of asylum, a safe third country or the safe country of origin, as appropriate (European Commission 2016c).

2. Relocation and the ‘hotspots’: an unsuitable response by the EU

In 2015, in order to manage the migratory pressures, the EU adopted emergency relocation measures. Relocation is a mechanism for dividing up between the Member States people who need international protection and are already in Europe. The negotiations leading to the adoption of these measures revealed worrying divisions between Member States: some were clearly against any sharing of the responsibility for hosting asylum seekers (Tissier-Raffin 2015). As was said by the President of the European Commission, Jean-Claude Juncker (2015) himself, ‘Where Europe has clearly under-delivered is on common solidarity with regard to the refugees who have arrived on our territory’.

The political agreement reached in July 2015 on the relocation of 40,000 people was formally approved in September. It was agreed that this would be a voluntary mechanism: Member States were free to join up to it or not (Council of the European Union 2015a). Only Austria and Hungary decided not to offer any places at all via this system. The second decision – on the relocation of 120,000 persons – was adopted in September 2015. This was a mandatory allocation. As no unanimous decision could be reached, the decision was adopted by qualified majority, with Hungary, the Czech Republic, Slovakia¹⁶ and Romania voting against it (Council of the European Union 2015b). These relocations are to take place within two years of the decision.

13. This system sets out a series of criteria for attributing responsibility for the processing of applications for asylum and protection to one sole Member State. In practice, responsibility has very often been attributed to the country where the first irregular entry took place. The aim of these criteria was to prevent ‘asylum-shopping’ (multiple applications for asylum in various Member States in order to obtain the best conditions) and the emergence of ‘refugees in orbit’ (a chain of transfers of refugees from one Member State to another in the absence of clear responsibility).

14. Articles 4, 6 - 11, 16, 17 and 20, and Recital 15 of Regulation 604/2013 of 26 June 2013, OJ L 2013, 180/31.

15. This decision was overturned by the Court of Appeal in August 2016 following an appeal from the public prosecutor. The four young people, however, will be permitted to stay in the United Kingdom. <https://www.goodplanet.info/actualite/2016/08/02/migrants-cour-dappel-contre-transfert-de-refugies-de-calais-royaume-uni/#sthash.j1Ykj6dk.dpuf>

16. Slovakia, followed by Hungary, has brought an application for annulment of the measure before the CJEU, arguing that it violates the EU’s procedural rules, the division of powers within the EU, and the principle of proportionality, CJEU, *Slovakia v. Council*, C-643/15 and *Hungary v. Council*, C-647/15, brought on 2 December 2015, pending.

The aim of these two measures adopted by the EU in 2015 is to distribute refugees more effectively between the Member States and to relieve pressure on the so-called 'frontline countries', Greece and Italy, through which most migrants and refugees enter the EU. In principle, according to the Dublin III regulation (European Parliament and Council of the European Union 2013a), these two countries should be responsible for processing all their applications for asylum. The agreements concluded are limited and temporary derogations to this regulation. By 2 March 2017, 13,546 relocations had taken place in total, including 3,936 from Italy and 9,610 from Greece. Out of the Member States, only Malta and Finland are on course to meet their obligations, while some countries (Hungary, Austria and Poland) are still refusing to take part in the programme, and others (the Czech Republic, Bulgaria, Slovakia) are participating only to a very limited extent (European Commission 2017b).

This relocation mechanism raises several fundamental rights issues. For example, only asylum seekers who have arrived in Italy or Greece and are of the 'right' nationality are eligible¹⁷. To be eligible, asylum seekers must be of a nationality whose average first instance international recognition rate for protection at the EU level is at least 75%, according to the most recent quarterly Eurostat figures. At the time when the Council decisions were adopted (August and September 2015), nationals of the following countries were eligible: Syria, Iraq, the Central African Republic, Eritrea, Yemen, Bahrain, Swaziland and Trinidad and Tobago. The tenth report from the European Commission, however, states that to be eligible, asylum seekers must now be nationals of Syria, Burundi, Eritrea, the Maldives, Qatar or Yemen. Iraqis, therefore, are now excluded (European Commission 2017b). This criterion is discriminatory and arbitrary, and can result in the automatic exclusion of certain asylum seekers who have a proven need of international protection (HRW 2017; Guild *et al.* 2017). Moreover, a decision to transfer an asylum seeker from Greece or Italy to another Member State does not imply automatic recognition of protection status for the seeker.

The host State will furthermore decide whether the individual is eligible for refugee status or can benefit from subsidiary protection. Member States, however, still differ in their interpretation and recognition of these two statuses. Depending on where they are sent, relocated individuals may not enjoy the same rights. This unequal treatment is not only unjustifiable in principle, but is even more damaging since those who have been relocated can only benefit from the rights linked to international protection in the State which has accepted them in via relocation. They will not therefore benefit from free movement within the Schengen Member States (Myria 2016; Tissier-Raffin 2015).

Finally, the asylum seekers eligible for relocation cannot, in this system, express a preference as to the country to which they are to be sent. This partly explains the lack of enthusiasm to participate in the programme: some would rather turn down the offer of relocation rather than be obliged to move to a country and maybe end up far from their loved ones (De La Baume 2016; Forum Réfugiés-Cosi 2015). Despite the right to

17. Moreover, to be eligible for relocation, asylum seekers must have arrived in Italy or Greece after 15 August 2015 (first relocation decision) and after 24 March 2015 (second decision). They must have lodged an application for asylum in Greece or in Italy (requiring identification, registration, digital finger-printing).

an effective (non-suspensive) remedy against the relocation decision, and the taking into account of various (family, language or cultural) criteria to ease integration in the host country, the fact that States can indicate preferences is bound to lead to questions or scepticism about fundamental rights (Tissier-Raffin 2015).

Practical implementation of the relocation plan is, moreover, based on the establishment of crisis centres, ‘hotspots’, at the EU’s external borders. These are designed to help the countries involved to meet their obligations in terms of controlling, identifying, registering and fingerprinting new arrivals. Their purpose is to sort asylum seekers into those eligible for relocation, those whose application will be examined by the local authorities and those whose application for asylum is manifestly unfounded and who should be sent back¹⁸. The nature of these ‘hotspots’ quickly raised certain questions: were they reception centres, or holding centres for irregular migrants waiting to be returned to their countries? Following the entry into force of the EU-Turkey agreement in March 2016 (see Section 3), the centres established on the Greek islands became de facto holding centres. In the days following the agreement, the refugees and migrants on the islands were taken to the mainland, so that the reception centres could be converted into closed centres for the new arrivals. On 22 March 2016, the HCR, which is against mandatory detention, suspended some of its activities in the closed centres on the islands, including the transporting of new arrivals to and from the centres. They limited their work to ensuring that human rights standards were respected and providing information on procedures to apply for asylum¹⁹. Oxfam and Médecins sans frontières (MSF) followed suit, announcing two days later that they would no longer help to transport new arrivals to the ‘hotspots’ on the Greek islands (RTBF-Info 2016). Human rights organisations denounced the appalling conditions in these centres (Amnesty International 2017a; MSF 2017).

A recent study (2017), commissioned by the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs, criticises the ‘hotspot’ approach in terms of fundamental rights. Far from relieving the pressure on Greece and Italy, the hotspots have made the situation worse and have led to the adoption of repressive measures contrary to human rights. They have mainly functioned as a ‘filtering’ mechanism, with few, if any, procedural guarantees and have failed to identify the vulnerabilities/special needs of the asylum seekers. The study lists various forms of malpractice: no information on the relocation procedure, use of coercion to take digital fingerprints and systematic detention to prevent secondary movements. The insufficient reception infrastructure and resources have resulted in long waiting periods in the processing of migrants, inhuman living conditions, and feelings of injustice, discrimination and despair among the migrants themselves (Guild *et al.* 2017).

18. Several EU agencies provide assistance to national authorities in the hotspots: in particular the European Asylum Support Office (EASO), providing practical help for asylum seekers (registration, identification, digital fingerprints, interviews), and Frontex, the Agency for cooperation at the EU’s external borders, for the return of ‘irregular migrants’. Europol and Eurojust provide support in dismantling people-smuggling and trafficking networks.

19. Melissa Fleming, spokesperson for the HCR (2016), ‘UNHCR redefines its role in Greece as EU-Turkey deal comes into effect’, 22 March 2016. <http://www.unhcr.org/fr/news/briefing/2016/3/56f14c5cc/hcr-redefinit-role-grece-apres-lentree-vigueur-laccord-ue-turquie.html>

3. The EU-Turkey agreement: outsourcing to dispense with the right to asylum?

One important aspect of EU asylum and migration policy which has an impact on the rights of migrants is the Union's external cooperation with third countries, principally transit countries.

On 18 March 2016, cooperation between the EU and Turkey, which had already begun under the EU-Turkey action plan (2015), moved up a gear with a new, highly controversial, political agreement. The so-called 'EU-Turkey Statement' declares that from 20 March 2016 onwards, all 'new irregular migrants' arriving in Greece will be returned to Turkey. The agreement also sets out a 'one for one' mechanism: for every Syrian sent back to Turkey, another Syrian in a refugee camp in Turkey will be resettled in Europe using a humanitarian corridor, the purpose being to counter illegal crossings between Greece and Turkey. Turkey agreed to take 'any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU'. In exchange, it received an overall sum of 6 billion euros to finance refugee-related projects in Turkey, as well as visa liberalisation and the re-energising of the accession process (Council of the European Union 2016).

This agreement has been discussed at length within civil society and academic circles. From an institutional viewpoint, many lawyers doubt whether this agreement, signed by the Council of the EU with a third country without the prior consent of the European Parliament, is valid (Collett 2016; Corten and Dony, 2016). This question was decided through an action for annulment lodged with the General Court of the EU in April 2016 by three asylum seekers²⁰. In their view, the said statement, which took the form of a press release, was an act which could be attributed to the European Council, setting down on paper an international agreement concluded on 18 March 2016 between the EU and Turkey. The appeal was dismissed, with the reasoning that the decision to conclude an agreement with the Turkish government had been taken by the Member States and not by the European Council. The EU-Turkey Statement could not therefore be considered as the act of an EU institution which could be annulled²¹.

The agreement with Turkey also raises serious fundamental rights issues (Carlier and Leboeuf 2017). The UN High Commissioner for Refugees (UNHCR 2016b), the UN Special Rapporteur on the human rights of migrants (Crépeau 2016), the Council of Europe's Commissioner for Human Rights (Muiznieks 2016), Human Rights Watch (2016b) and Amnesty International (2016a) all questioned its legality with regard to the principle of non-refoulement enshrined in the Geneva Convention, and the ban on collective expulsions guaranteed by the European Convention on Human Rights and the EU's Charter of Fundamental Rights.

20. The applicants entered Greek territory and lodged an application for asylum there because of pressure from the national authorities, and in order to avoid being returned to Turkey with, possibly, the risk that they would be held there or be deported to their respective countries of origin. They claimed that this pressure was the result of implementation of the Statement.

21. EU General Court, Order of 28 February 2017 *NF, NG and NM v. European Council*, T-192/16, T-193/16 and T-257/16.

According to the terms of the agreement, all migrants, asylum seekers and refugees who have entered Greece irregularly via Turkey are to be sent back to Turkey, considered to be a safe third country. Asylum applications lodged in Greece will be examined quickly for admissibility, without an in-depth analysis of their substance. If the individual already benefits from effective protection in Turkey (first country of asylum), or could have requested asylum there (safe third country²²), his application will be declared inadmissible and he will be returned to Turkey. This is by application of the rules in the so-called ‘procedure’ directive, which sets out two cases when the national authorities may declare an application for asylum to be inadmissible (European Parliament and Council of the European Union 2013b). Greece made haste to transpose the directive, the day after the agreement, into a law which allowed for the use of the concepts of ‘safe third country’ and ‘safe first country of asylum’²³. However, it is questionable whether these terms can be applied to Turkey, for two main reasons:

(1) Turkish legislation and practice on access to asylum procedures and to international protection are still extremely restrictive. The Geneva Convention on the status of refugees only applies fully to member states of the Council of Europe. Syrians have been, in principle, authorised to apply for temporary protection there since 2011, but with no real guarantee of access to or receipt of such protection. Protection granted is also limited to access to healthcare, education and the labour market. Non-Syrians have been able to benefit from temporary protection, subject to certain conditions, since 2014, which in theory gives them access to healthcare and education, but not to employment (Myria 2016).

(2) On 6 April 2016, Turkey adopted a law intended to make it clear that Syrians returned under the new system may apply for and receive temporary protection. This covers both those who were previously registered in Turkey and those who were not²⁴. In any case, the level of this protection is far below that afforded by the right to asylum in most Member States, and is difficult to implement. Moreover, human rights organisations have repeatedly denounced practices such as illegal detention of migrants and violations of the principle of non-refoulement. Human Rights Watch (HRW) (2016a) and Amnesty International (2017a) have denounced Turkish border guards who regularly return Syrian refugees trying to cross the border. Cases of arbitrary arrests and illegal detention of migrants of all nationalities, for several weeks, sometimes with ill-treatment, have also been reported (Amnesty International 2017b).

It is also ironic to see that Turkey is being considered by the EU as a safe country, to which asylum seekers may be returned from Greece, while Greece, condemned in 2011 by the European Court of Human Rights, could not itself be considered as a safe country²⁵.

22. A safe third country is a non-EU country through which an asylum seeker transited during his journey. ‘Safe’ in this context means that the person could have had access there to an asylum procedure, and, if their application had been accepted, could have obtained international protection status there. In this way, the application for asylum may be declared inadmissible without any examination of the substance taking place (Myria 2016).

23. Law 4375 3 April 2016.

24. Regulation No.2014/6883 on temporary protection and Regulation 2016/8722 amending the former regulation.

25. ECtHR, *M.S.S v. Belgium and Greece*, 21 January 2011, Application No.30696/09.

There is another cause for concern: the readmission agreements signed by Turkey with other third states. Not wishing to see migrants who have been readmitted by European countries remaining indefinitely in Europe, the EU has itself embarked on signing a number of bilateral readmission agreements with states which are 'sources of immigration', such as Pakistan, Russia, Nigeria and Syria, and is looking to do so with 14 other countries including Iraq, Iran, Sudan and Egypt. These agreements, by allowing so-called 'chain refoulement' of people fleeing war and persecution, deny the existence of the fundamental right to leave one's country to claim asylum. The ban on returning a person to a country, including one considered as safe, if there is a risk that this country might send him on to another country where he is at risk, i.e. that of his nationality or residence, is, moreover, contrary to Article 3 of the ECHR. Afghan nationals, for example, were expelled from Turkey without their individual situation having been properly examined (Toubon 2016).

Finally, the resettlement mechanism developed by the EU and Turkey organises bartering in (Syrian) human beings, and totally ignores refugees of other nationalities who are registered in Turkey, thus violating the non-discrimination principle enshrined in Article 3 of the Geneva Convention (Carrera and Guild 2016; Cogolati 2016).

Despite the negative humanitarian impact of this agreement (MSF 2017; HRW 2017), the European Commission and the European Council are still, one year later, putting pressure on Greece to speed up returns to Turkey. Following the EU-Turkey agreement, attempts to return Syrians to Turkey were made particularly difficult by the appeal committees, which considered the returns to be dangerous for the Syrians. In June 2016, apparently under pressure from the EU, the Greek government changed the composition of these appeal committees, dismissing independent human rights experts and thus removing the members who, for legal reasons, were against returning Syrians to Turkey²⁶ (Crépeau 2017). Two Syrian asylum seekers brought their case to the Greek Council of State, which has still not reached a decision. As of 31 January 2017, nobody had been forcibly returned to Turkey with the argument that Turkey was a safe third country. Nevertheless, if the Greek Council of State rejects the appeal, this could pave the way for mass returns of asylum seekers to Turkey (Amnesty International 2017a).

In the view of the European Commission, the agreement with Turkey is a success: nearly a year after its adoption, 'daily crossings from Turkey to the Greek islands have gone down from 10,000 persons in a single day in October 2015 to 43 a day now. Overall, arrivals have dropped by 98 %. The number of lives lost in the Aegean Sea since the Statement took effect has also substantially fallen, from 1,100 (during the same period in 2015-2016) to 70' (European Commission 2017c). However, in the view of Amnesty International, the International Federation for Human Rights (FIDH), HRW, MSF, Solidarity Now, the Greek Council for Refugees and the Greek Union for Human Rights, the EU-Turkey agreement is a failure. It violates international asylum law, results in

26. By 31 December, these new committees had already decided, in 20 cases, that Turkey was a safe country, although it excludes non-Europeans from its refugee protection. This is in stark contrast with the previous committees, which had only confirmed the decisions of inadmissibility of asylum applications taken by the Greek Asylum Department in 3 cases out of 393 (MSF 2017).

degrading conditions for the migrants trapped on the Greek islands, and disregards the European values of human rights and dignity (Raffenberg 2017; ETUC 2016).

4. Frontex's new mandate: control the external borders to the detriment of migrants' rights

Claiming that this would help in the fight against human trafficking and smuggling, the EU has developed an increasingly full set of legal and military instruments to combat clandestine arrivals. In 2004, it set up the Frontex agency, responsible for the management and operational coordination of its external borders. While Frontex explains and justifies its border control work by the need to provide help to migrants and to combat terrorism, the Agency has often been accused of violating the fundamental rights of migrants and refugees, and of undermining the principle of non-refoulement (Tissier-Raffin 2015; Cogolati 2016). In 2012, for instance, the Court of Justice of the European Union (CJEU) annulled a European Council decision granting the agency new powers, which mean that 'the fundamental rights of the persons concerned may be interfered with'²⁷. In 2014, the European Ombudsman examined the return operations carried out by Frontex. In her conclusions, she suggests changes to ensure proper protection of migrants' fundamental rights during forced returns. These changes involve transparency of the operations, the application of common rules concerning the use of means of restraint, and improving appeal processes (European Ombudsman 2015).

In October 2016, Frontex was renamed the 'European Border and Coast Guard Agency', and its powers were increased (European Parliament and Council of the European Union 2016). Under its new name, the Agency takes a similar approach to the old Frontex: as well as the task of managing migratory flows, it now has a new aim - to maintain security within the EU. This new mandate needs to be considered from the angle of migrants' rights.

The Agency's powers have increased. Member States which refuse to make staff available to it in an exceptional situation must now justify such a refusal and must, in any case, be ready to provide half the staff numbers requested. The Agency is now able to carry out a vulnerability assessment of Member States' external borders. This power of initiative and action is new. If the border is not sufficiently 'well-guarded', the Agency may intervene and deploy its agents on the territory of Member States. If a Member State refuses to cooperate, the Council may reintroduce controls at the internal borders and temporarily exclude that State from the Schengen area. These new powers are worrying, because their purpose is to oblige Member States to pursue a policy of strict control at the borders, to prevent people from crossing them (CIRE 2016). Its enhanced powers in the area of data collection and processing also give cause for concern. It will centralise the personal data not only of individuals suspected of 'involvement in cross-border crimes such as migrant smuggling, terrorism or trafficking in human beings', but also of people who 'cross the external borders without authorisation'. In the eyes of European decision-makers, migrants are thus assigned risk profiles equating them

27. CJEU, 5 September 2012, *European Parliament v. Council*, C-355/10.

with criminals who must be watched closely and identified rapidly to counter the risk or potential threat which they represent. This helps to strengthen the confusion between migrants and criminals, or even migrants and terrorists (*ibid.*).

With its new mandate, the Agency will receive more resources to carry out its activities, thus becoming the most generously-funded EU agency. This leaves no doubt as to the priorities of the EU and its Member States with regard to migration and asylum policy²⁸. No mention, however, is made of guarantees that fundamental rights will be protected. There has been no response to the concerns raised by the European Ombudsman and certain NGOs (Frontex 2014), while the Agency's role in the establishment of a forced return policy at European level has been significantly increased (Cogolati 2016). There is a whole chapter in the Regulation on expulsions, showing the priority given to this aspect of migration policy. The mass expulsion of irregular migrants considered as 'undesirable' thus appears as one of the main goals of the EU²⁹, at the expense of the principle of non-refoulement, set out in the Geneva Convention, and the principle that each situation should be examined individually (Lievens 2016). At the request of one or more participating Member States, or on its own initiative, the Agency may organise return operations, the material and human resources for which are provided by that Member State and/or a third state. If human rights, however, are violated, who will be held responsible: the Agency, the Member State which decided to expel the individuals or the third country which provided the staff (CIRE 2016)?

The fact that the Agency can now require operations to take place on the territory of Member States makes it even more difficult to identify who is responsible in cases involving human rights violations. If a violation takes place during an operation imposed by the Agency, Member States will tend to blame the latter (since the operation took place at its initiative), while the Agency could also point the finger at the state concerned (since it was its staff who were involved). The Agency may step up its cooperation with non-EU states which do not respect European standards on fundamental rights, without being able to hold them responsible for any violations of such rights (CIRE 2016).

Another worrying factor is the lack of supervision of the Agency's activities. There is only very limited democratic control, although the new mandate introduces an article making the Agency accountable to the European Parliament and the Council. As underlined by Lievens (2016), this is 'a democratic varnish which is already displaying large cracks'. Frontex was criticised in late August 2016 for excessive and quasi-systematic use of force during its interventions in the Aegean Sea³⁰. The Agency denied the allegations and blamed the Greek authorities. The Greek coastguards, however,

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28. On top of its annual budget of 143.3 million euros (2015), the European Commission is planning to add 31.5 million euros from 2017 onwards, and to create 602 extra posts, with the corresponding financial resources, by 2020. By way of comparison, the European Asylum Support Office had a budget of around 19 million euros in 2016. <https://www.easo.europa.eu/sites/default/files/public/EASO-Budget-2016-adopted-by-MB.pdf>
 29. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf
 30. *The Intercept*, 'Shoot First: coast guard fired at migrant boats, European border agency documents show', 22 August 2016; *Le Point*, 'Frontex a-t-elle tiré sur des migrants?', 1 September 2016. <http://www.rfi.fr/europe/20160902-poseidon-frontex-mediterranee-tirs-bateaux-migrants-questions>

were never convicted³¹. Legally speaking, Frontex has never been charged and convicted in a court of law, although violations of fundamental rights have been alleged and even duly documented by NGOs (Tissier-Raffin 2015).

5. Towards a less protective, less welcoming European asylum system?

The inflow of migrants has revealed the weaknesses which exist in the Common European Asylum System (CEAS)³² and in one of its pillars, the Dublin III regime³³. Despite some common European standards, recognition rates for refugee status vary between Member States, encouraging asylum seekers to carry out irregular secondary movements. Given these weaknesses, in spring 2016, the EU launched a large-scale reform, with a view to creating a common, sustainable and fair European asylum system, reducing the discretionary clauses on key aspects of the asylum procedure (European Commission 2016h).

On 4 May 2016, the European Commission launched the first stage of the revision of the Common European Asylum System (CEAS). In its recast of the Dublin III Regulation (European Commission 2016i), it foresees sanctions for asylum seekers who proceed to secondary movements, withdrawing the material advantages linked to reception, as well as submitting them to an accelerated asylum procedure. In parallel, Member States would be obliged to take back a beneficiary of international protection if he or she was irregularly present on the territory of another Member State.

The imposition of sanctions is an issue for discussion: this type of measure emphasises that asylum seekers have not only rights, but also duties vis-à-vis the Member States which take them in. However, migrants are not always fully responsible for secondary movements: some Member States (Italy, Greece), which did not always have the capacity and/or wish to register them and keep them in the country, did let them transit to other States (Balleix 2016).

The proposed recast of the Dublin regulation also stipulates a mandatory examination of admissibility for all asylum applications, in the light of the concepts of first country of asylum and safe third country (Art. 3.3). In such cases, the person still has his application for asylum examined individually, and has the right to appeal, but this examination only concerns the protection he could be given by the safe third country or country of first asylum, rather than considering the substance of his application. Until now these concepts were optional, and some Member States had not even transposed them into their legislation. Making them a mandatory common criterion for admissibility of asylum applications would drastically reduce the scope of international protection in

31. <https://www.fidh.org/fr/themes/droits-des-migrants/renforcement-de-l-agence-frontex-l-ue-reste-sourde-aux-cris-d-alarme>

32. The CEAS is based on five pillars: the directive on reception conditions, the directive on asylum procedures, the directive on the conditions required, the Eurodac regulation and the Dublin regulation.

33. See note 13.

the EU, so that, ultimately, the only applications to be examined would be applications from persons who, in the view of the Union, could not be sufficiently protected in other third countries. This would be an across-the-board extension of the logic behind the EU-Turkey Statement of 18 March 2016, although even the classification of Turkey as a first country of asylum or safe third country is debatable (Balleix 2016; Forum Réfugiés-Cosi 2016b)³⁴.

In a second 'package' of proposals published on 13 July 2016, the European Commission proposes, firstly, to transform the 'procedures' (European Parliament and Council of the European Union 2013b) and 'qualifications' (European Parliament and Council of the European Union 2011) directives into regulations, in order to harmonise asylum procedures and the conditions for granting international protection (European Commission 2016c and 2016e), and secondly to revise the 'reception' directive (European Parliament and Council of the European Union 2013c) (European Commission 2016d). While these proposals do make some improvements to the common asylum system, they also raise fundamental rights issues. Among the improvements, there is a strengthening of Member States' obligation to assess specific needs ('procedures' and 'reception' proposals); the appointment, within five days, of a legal representative for unaccompanied foreign minors (UFM) ('reception' proposal); the restating of the right of all asylum seekers to legal assistance, free of charge, from the first instance, including the right to be accompanied during the interview when their application is examined ('procedures' proposal).

However, some provisions may result in a weakening of the guarantees offered to asylum seekers. In the 'procedures' proposal, the following provisions are particularly worrying: the non-suspensive nature of the appeal against a negative decision handed down by an accelerated procedure, and the period to lodge this appeal, which has been shortened by two weeks; the use of an accelerated procedure for asylum seekers from safe countries of origin, the mandatory application of the concepts of 'safe third country' and 'country of first asylum', without any mechanism planned to monitor application of the 'safe third country' principle. The proposal for the 'qualifications' regulation also foresees the introduction of a system to review the status of beneficiaries of international protection. This means that someone who has obtained refugee status would only be protected for an initial period of three years, after which his status would be reviewed to see if the risks on return still exist. Such a provision would be bound to make protection statuses far more precarious (Forum Réfugiés-Cosi 2016b).

In order to stamp out secondary movements, the proposal for a revised 'reception' directive states that when an asylum seeker is identified in a Member State other than the country where he is authorised to be in the light of the Dublin criteria, he will be sent back to the original country, where he will lose all the material benefits of reception (except for medical help). His application for asylum will automatically be dealt with by accelerated procedure. This limited access to social rights, however, does not comply

34. The other proposals from the European Commission include the conversion of the European Asylum Support Office (EASO) into a European Union Agency for Asylum (EAA), and the addition of a corrective mechanism to the Dublin system (European Commission 2016j and 2016k).

with the human rights standards set out in the Geneva Convention, the ECHR, the European Social Charter and the Charter of Fundamental Rights (Hruschka 2016).

These proposals for a more binding harmonisation of standards should be approached with care. The Commission has emphasised that they should make it possible to reduce ‘undue pull-factors to come to the EU’. The risk is that these aims will result in a levelling downwards of reception conditions and of migrants’ rights. This would run counter to the stated objective: to create a more humane European asylum policy (HRW 2016c; AEDH 2016). What is more, a downwards convergence of standards would not eliminate the real pull-factors, such as pre-existing family or social networks, or, simply, a Member State’s general economic prosperity (Enderlein and Koenig 2016).

Conclusion

The analysis, from a human rights viewpoint, of the measures adopted in 2016 to address the challenge of the migratory crisis results in mixed conclusions. The EU Member States reacted in ways which set aside fundamental values and the protection of rights, rather than working to ensure that these would be upheld. EU policies essentially focused on preventing the arrival of refugees and outsourcing the management of asylum seekers and refugees (HRW 2017).

The option for refugees to legally enter EU territory and benefit from international protection there is presented as an alternative to dangerous journeys over the Mediterranean and smugglers’ networks. Nevertheless, the various categories of legal entrance routes give rise to legal and political questions which come up against opposing interests. The refugee resettlement programme is no real success, given the scanty progress made in the Member States. As for family reunification, another legal entry channel par excellence, the restrictions imposed on refugees and beneficiaries of subsidiary protection were tightened in 2016 in some Member States of destination. In such circumstances, increasing numbers will embark on dangerous journeys, thus lining the pockets of smuggler networks.

Similar conclusions can be drawn on relocation. Member States have shown little inclination to share out responsibility for asylum seekers more fairly within the EU. The programme also raises many fundamental rights issues: the discriminatory and arbitrary criterion of nationality, the disregard for the preferences of eligible asylum seekers; the unequal treatment of beneficiaries depending on the host State, etc. The ‘hotspots’, a key element of the programme, have, far from relieving the pressure on Greece and Italy, made things worse. They have led to the adoption of repressive measures contrary to human rights, to inhuman living conditions, and have left asylum seekers with a sense of injustice, discrimination and despair.

The EU-Turkey agreement of March 2016 confirmed the outsourcing approach to asylum policy. This agreement sparked strong reactions from many human rights organisations and still raises questions as to the respect of fundamental rights: illegal detentions, violations of the non-refoulement principle, arbitrary arrests, ill-treatment.

Due to this agreement, the image of the EU is increasingly one of a fortress closed to economic migrants and refugees (Nahavandi 2016), a fortress which has acquired a controversial weapon, the Frontex agency, the non-avowed aim of which is to 'send back large numbers of migrants arriving at the external borders of the European Union' (Ottavy and Clochard 2014).

As recommended by the Council of Europe's Commissioner for Human Rights, Member States, in order to meet migratory challenges effectively and while respecting human rights, should meet their human rights obligations and work together to develop common solutions based on country-to-country solidarity. They should guard against adopting asylum provisions which are increasingly restrictive, and which weaken human rights standards (Muižnieks 2016).

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Chapter 4

Towards a European Pillar of Social Rights: from a preliminary outline to a Commission Recommendation

Sebastiano Sabato and Bart Vanhercke¹

Introduction

There is widespread agreement that the European Union (EU) and its Member States are failing to deliver on one of the fundamental goals of the European project: *the simultaneous pursuit of economic and social progress* (Vandenbroucke with Vanhercke 2014). The legacy of the economic crisis in social and budgetary terms, the risk of persistently low economic growth and structural unemployment for several years, rising inequality and the challenges of an ageing population make the pursuit of economic progress and social cohesion even more challenging. While one should not overlook the fact that a European social dimension has been actively pursued for the past fifty years – resulting in an extensive social *acquis* – it seems fair to say that, for several years now, the EU policymaking agenda has been dominated by economic, budgetary and monetary concerns and austeritarian policies (2008-2014).

As a result, the EU's social agenda of the past five years was limited to largely symbolic initiatives such as the Youth Guarantee and the Social Investment Package (both proposed in 2013). The proposal for a 'first, preliminary outline' of a European Pillar of Social Rights (EPSR)² tabled by the European Commission in March 2016 may however present the embryonic start to the development of more ambitious European employment and social policies, building on the existing *acquis* (European Commission 2016b).

The chapter is organised as follows. Section 1 briefly describes the key traits of the Commission's March 2016 'First preliminary outline of a European Pillar of Social Rights'. Section 2 portrays the positions and concerns – both on substantive and governance issues – of key European stakeholders with regard to this initial Pillar proposal: EU institutions and bodies, peak European social partner organizations, European non-governmental organizations (including anti-poverty NGOs) and the academic community. The section flags the strengths and weaknesses of what was probably the most significant EU initiative in the social field in 2016.

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1. The authors would like to thank Denis Bouget, Dalila Ghailani (OSE) and Zane Rasnača (ETUI) for the useful comments they provided. Marcel Muraille (OSE/ULB research intern) provided valuable research assistance. We are also grateful to Pieter-Jan De Graeve (Universiteit Gent) as well as two anonymous reviewers for commenting on an earlier version of this chapter, which was published (in Dutch and French) as Vanhercke and Sebastiano (2017). The responsibility for the content of the chapter lies entirely with the authors.
 2. European Commission President Jean-Claude Juncker announced the EPSR during his first State of the Union speech to the European Parliament (EP) in September 2015.

Section 3 discusses the contents of the Recommendation on the Pillar tabled by the Commission at the beginning of 2017 (European Commission 2017a), comparing its content with the March 2016 preliminary outline. Furthermore, we provide some reflections on the extent to which the public consultation affected the substantive orientations of the Recommendation. We conclude that, in spite of its possible pitfalls and obvious shortcomings, the future EPSR has the potential to represent a ‘new start’ for social Europe in the aftermath of Brexit: if nothing else, it paves the way towards a new and long overdue ‘Social Agenda’ for the European institutions while centre-staging the question of social rights. However, a solemn proclamation of the EPSR by the Heads of State and Government will only bring about concrete results when backed by effective implementation arrangements. In other words: the EPSR represents a real window of opportunity, but it is only one (albeit major) step towards creating a true social dimension for the European Union.

1. A ‘preliminary outline’ of a European Pillar of Social Rights: rebalancing the EU’s economic and social dimensions?

At least at the discursive level, the need to reinforce the EU’s social dimension and to rebalance EU social and economic policies – especially in the Eurozone – has been a key concern of the Juncker Commission since it came into office in November 2014. This priority was indeed flagged in the Commission President’s inaugural speech to the European Parliament in July 2014 (European Commission 2014) and was restated in the 2015 Commission Communication on Completing the Economic and Monetary Union (EMU) (European Commission 2015). It was also reflected in the ‘Five Presidents’ report’ of June 2015 (Juncker *et al.* 2015), which confirmed the ambition that President-elect Juncker had set out for the EU: the need to achieve a ‘Social Triple A’ rating, in parallel to achieving a ‘triple A’ in the financial sector.

As a first step, the Commission President stated that the EU’s broad framework for the coordination of economic and social policies, the European Semester, should not just be an economic and financial process, but should necessarily consider the social dimension of Economic and Monetary Union, notably through the Country-specific Recommendations (Juncker *et al.* 2015). Recent research indeed points out that, between 2011 and 2016, a partial but progressive ‘socialization’ of the European Semester has taken place, at the level both of substantive policy orientations and of its governance procedures (Zeitlin and Vanhercke 2015) while others are more critical, pointing to the prevalence of austerity-oriented structural reforms and a limited focus on (social) investment (Crespy and Schmidt this volume).

The second concrete step towards rebalancing the EU’s economic and social dimensions was the launch of a public consultation on a preliminary outline of a EPSR in March 2016, which ran until December of the same year³. In the Commission’s view (European Commission 2016a), the future Pillar would contribute to creating a highly competitive

3. To be more precise: the Commission Communication launching the consultation was accompanied by an Annex 1 containing the ‘First preliminary Outline of a European Pillar of Social Rights’ (European Commission 2016b).

social market economy and to overcoming the crisis. The Commission indeed had high hopes for the future Pillar, intending it to become: '[...] a reference framework to screen the employment and social performance of participating Member States, to drive reforms at national level and, more specifically, to serve as a compass for renewed convergence within the euro area' (European Commission 2016a:7).

The Pillar would build on the EU 'social acquis'⁴ – but it was not intended to simply restate its content. Indeed, the Commission's stated goal was to revisit (modernise) the acquis in the light of new social, demographic and economic challenges (European Commission 2016b: 8). More specifically, according to the preliminary outline of the EPSR, the Pillar would consist of twenty principles covering twenty policy domains organized around three chapters (see Table 1): (a) equal opportunities and access to the labour market; (b) fair working conditions; and (c) adequate and sustainable social protection. As we have argued elsewhere (Vanhercke and Sabato 2017), the fight against poverty and social exclusion is made more or less explicit in fifteen of the twenty policy domains of the preliminary outline of the Pillar (European Commission 2016b) and can thus be said to have been mainstreamed across the proposal.

The rationale behind the Pillar does not significantly differ from previous Commission initiatives in the social domain '[...] social policy should be conceived as a productive factor [...] Europe's capacity to achieve well-functioning and fair labour markets and welfare systems is key to its ability to boost productivity, compete globally, strengthen social cohesion and keep increasing the living standards of citizens' (European Commission 2016a: 3-4).

From the onset, the Commission (2016a) stressed that the EPSR will not be legally binding. Yet, besides serving as a blueprint for future action, some observers at the time of publication of the preliminary outline claimed that the EPSR should at least be 'politically binding' (Larsson 2016)⁵. Given that the EU has varying degrees of competence in the various policy domains included in the EPSR, the Commission made it clear that implementation will require a varied set of instruments, ranging from 'soft governance' (including Recommendations) to legislation (the preliminary outline is quite vague on this point). Importantly, the proposed Pillar primarily concerns the Member States of the euro-area, even if it is open to the other Member States on a voluntary basis.

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4. The body of common rights and obligations that is binding on all EU Member States. The social acquis was detailed in a dedicated Commission Staff Working Document (European Commission 2016c) accompanying the preliminary outline for a EPSR.
 5. The proposal for an inter-institutional proclamation of the Pillar by the European Parliament, the Council and the Commission goes in this direction (European Commission 2017e). There is an interesting parallel with the Charter of Fundamental Rights of the EU: initially solemnly proclaimed at the Nice European Council on 7 December 2000 (without any binding legal effect), the Charter became legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009. We would like to thank Zane Rasnača for pointing this out to us.

Table 1 Structure of the 2016 preliminary outline of the EPSR

Chapter	Principles
Chapter I Equal opportunities and access to the labour market	<ol style="list-style-type: none"> 1. Skills, education and long-life learning 2. Flexible and secure labour contracts 3. Secure professional transitions 4. Active support for employment 5. Gender equality and work-life balance 6. Equal opportunities
Chapter II Fair working conditions	<ol style="list-style-type: none"> 7. Conditions of employment 8. Wages 9. Health and safety at work 10. Social dialogue and involvement of workers
Chapter III Adequate and sustainable social protection	<ol style="list-style-type: none"> 11. Integrated social benefits and services 12. Healthcare and sickness benefits 13. Pensions 14. Unemployment benefits 15. Minimum income 16. Disability benefits 17. Long-term care 18. Childcare 19. Housing 20. Access to essential services

Source: European Commission (2016b).

Strikingly – in view of the name of the initiative and the nearly 20 references to the Charter of Fundamental Rights – not a single one of the principles in the 2016 preliminary outline was formulated as a concrete ‘right’. All were formulated very prudently, using terms like ‘encourage’ (e.g. low skilled young people and working age adults shall be encouraged to up-grade their skills), ‘ensure’ (e.g. equal treatment), ‘prevent’ (e.g. misuse or abuse of precarious and non-permanent employment relationships) and ‘include’ (e.g. action to support the unemployed shall include the requirement for active job search)⁶.

2. Key stakeholder and institutional views on the preliminary outline of the Social Pillar

The next step in the process leading to an EPSR was the European Commission’s launch of a public consultation in March 2016. This section describes how the preliminary outline of the Social Pillar was assessed – in terms of strengths and weaknesses – in

6. Other examples are ‘have access’ (e.g. to adequate leave arrangements for children), ‘foster’ (e.g. gender equality in the labour market and education) and ‘shall be’ (e.g. Social partners shall be consulted in the design and implementation of employment and social policies).

the months following its publication. We draw on the responses of some of the most influential social stakeholders and institutional players to the nine-month public consultation. The content analysis is based on a careful qualitative analysis and coding of both pros and cons developed in some ten authoritative submissions from institutional players and NGOs engaged in the field of social policies (stakeholders provided a total of ca. 200 position papers⁷).

2.1 Potential strengths: agenda-setting, creating synergies and stakeholder involvement

The EPSR as an opportunity to rebalance the political agenda and improve monitoring

During the 2016 public consultation on the EPSR, certain stakeholders stressed the Pillar's potential to foster convergence among the performances of European welfare states and to improve the EU's monitoring capacities. For instance, the International Labour Organization (ILO⁸) (2016) stated that the Pillar sought 'incremental consensus' by gradually implementing measures that should be eventually addressed to all EU Member States. For the ILO, convergence should be sought in the scope of coverage and adequacy of social benefits as well as in relation to their duration. The Confederation of Family Organisations in the European Union (COFACE⁹) (2016a) saw an opportunity to rebalance the political agenda and improve monitoring capacity at European level, while Eurodiaconia (2016a and 2016b) stressed the potential to create a fair and truly pan-European labour market, facilitating the convergence of social standards in Europe.

For their part, the EU's Employment Committee (EMCO) and the Social Protection Committee¹⁰ (SPC) claimed that the Pillar represented an opportunity to strengthen operationalisation of the EU social acquis, embedding it in the new socio-economic governance framework of the European Semester (EMCO and SPC 2016). Furthermore, the two Committees called for social standards to be updated, *inter alia* by improving existing instruments¹¹. This said, according to the two advisory bodies to the EPSCO Council, principles such as the respect of Member State competences, subsidiarity and the autonomy of social partners should be ensured and the variety of national situations taken into account. In other words, the appetite for 'upward social convergence' among Member States seemed, at the most, lukewarm.

The EPSR could promote synergies among interrelated policy areas

Stakeholder organisations and institutions alike (cf. COFACE 2016a; Eurochild¹² 2016; EAPN 2016; ILO 2016) saw the Pillar as a possibility to redirect attention towards social

7. The position papers on the preliminary outline of the EPSR are available at <http://ec.europa.eu/social/main.jsp?catId=1235&langId=e>

8. The International Labour Organization (ILO) is a United Nations agency dealing with labour problems, particularly international labour standards, social protection, and work opportunities for all.

9. COFACE Families Europe is a pluralistic network of civil society associations representing the interests of families.

10. Both the EMCO and SPC are advisory bodies to Employment and Social Affairs Ministers in the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO).

11. Including by increasing the use of policy learning based on best practices, setting common objectives and benchmarking, and promoting thematic discussion.

12. EUROCHILD is a network of organisations working with and for children throughout Europe.

policy by focussing on key social issues. COFACE (2016b) maintained that the Pillar should strengthen the links between employment and social policy. Yet, according to the European Social Policy Network (ESPN¹³) (2016), one key challenge was the issue of EU competences in the social policy domain and the need to reconcile enforceability with subsidiarity. In this respect, a ‘pragmatic approach’ would be needed.

On the institutional side, the European Parliament (2017) stressed that, in most fields, the EU had no scope for action besides providing guidelines, while in other domains there was room for harmonisation through the setting of minimum standards. Consequently, while the Pillar should be binding in some domains, in other domains it appeared necessary to continue benchmarking and monitoring through the Open Method of Coordination (OMC). Discrepancies between the competences of the EU in the various social policy fields were also highlighted by the EMCO and the SPC (2016), both of which recommended the elaboration of sufficient Member State guidance without being too prescriptive. As we will see in the next section, this clear stance by the Member States had an important influence on the substantive features of the 2017 Pillar Recommendation.

The EPSR as an opportunity for including social stakeholders, civil society, experts and institutions

Several stakeholders and institutions (among others, COFACE 2016a and 2016b; Eurochild 2016; EMCO and SPC 2016) appreciated the Pillar’s potential as an opportunity to involve a broad array of players in policy-making. The decision to launch a public consultation on the preliminary outline of the Pillar was welcomed by all stakeholders. According to Caniard (2016), the involvement and ownership of the Pillar by European citizens were key preconditions for its successful implementation. However, beyond the initial consultation process, it is not clear through which procedures stakeholders will be practically involved in implementing the EPSR. Consequently, the European Social Policy Network (ESPN 2016) recommended that the EPSR should include a strong statement on the importance of both civic and social dialogue (see also Committee of Regions 2016a and 2016b), while the European Parliament (2017) invited the Commission to propose mechanisms for the adequate involvement of all relevant stakeholders at all levels in the implementation of the Pillar. As we will see below, the Commission was unable to deliver on this strong demand.

2.2 Potential weaknesses: between excessive expectations and the risk of a ‘two-speed’ Europe

Several stakeholders stressed possible risks and shortcomings related to the EPSR and its implementation. Among these are excessive expectations, the legal status of the EPSR, the risk of non-implementation, missing dimensions and the risk of a ‘two-speed’ Europe.

13. The European Social Policy Network (ESPN) was established in 2014 to provide the Commission with independent information, analysis and expertise on social policies.

Excessive expectations and a narrow understanding of 'social rights'

The European Commission's reference to the notion of 'rights' – *inter alia* in the title of the initiative and its multiple references to the Charter, see Section 1 – risks raising excessive expectations. Indeed, if the Pillar is not strong enough, it could become a 'boomerang' for the EU. As Caniard (2016) pointed out, the EPSR must ensure the effective enforcement of rights if it is to be meaningful¹⁴. Otherwise, the Pillar could have counterproductive effects on the EU's credibility (ESPN 2016). Recurring to the notion of 'rights' may be a slippery slope for the European Commission, in particular for the European Commission's Directorate General for Employment, Social Affairs & Inclusion (DG EMPL). Indeed, at Member State level solemn declarations of rights are embedded in constitutions and not in secondary legislation, something the EU cannot do for institutional reasons. At the same time, given the EU-level emphasis on 'social policy as a productive factor', there is a risk that an EU declaration of social rights may be limited to this narrow understanding of 'social rights'. Indeed, some social rights do not promote growth per se (e.g. the right to strike) but are nevertheless fundamental to building fairer and more cohesive societies and, eventually, to reinforcing the notion of social citizenship on which our democracies are built.

The elephant in the room: legal status and (lack of) competences

Many commentators pointed out that the EU lacks competences in most of the policy areas included in the EPSR. Consequently, one of the challenges related to the Pillar is the lack of clarity as to its legal status (European Association for the Defence of Human Rights n.d.; Seikel 2016). Clearly not all the principles of the Pillar will be implemented through binding legislation. In many cases, the most likely instrument will be Recommendations (Eurodiaconia 2016). Arguably the lack of a legal base explains why, in spite of President Juncker's earlier declarations¹⁵, the preliminary outline only contains 'principles', for example with regard to a minimum income¹⁶ and minimum wages, but does not propose legal instruments (nor in fact concrete soft governance initiatives) in these areas.

Lörcher and Schömann (2016) pointed out a further potential problem: the EU has no legal basis for implementing an instrument limited to Eurozone countries, i.e. as the Pillar is currently designed. Yet, as highlighted above, some observers (Larsson 2016) point to the fact that the EPSR could be *politically binding*, thus acting as a 'normative compass' for EU and Member State initiatives. Furthermore, given that the EU has competences in the field of economic policy, the Pillar could make it possible to consider the social side-effects of such policies (Eurodiaconia 2016). This said, the ESPN (2016) stressed that, as far as possible, the Pillar should follow a binding approach. A different opinion, however, was expressed by Seikel (2016) who claimed that, given the EPSR's prioritisation of fiscal consolidation and competitiveness goals, it would be better for the

14. Note that this is a recurring problem with almost every statement of 'social rights', for example their inclusion in the Belgian Constitution: this had, rather, a symbolic value. The authors would like to thank Jan Vranken for pointing this out.

15. For example, a contribution in a panel discussion on the priorities of the incoming Malta Presidency of the EU for the next six months at the European Parliament in Strasbourg, France, 18 January 2017. <http://uk.reuters.com/article/uk-eu-labor-juncker-idUKKBN15729W>

16. It indeed came as a surprise to some that the Commission did not propose a Directive on a minimum income in the preliminary outline.

EPSR to remain non-binding. Importantly, the European Parliament (2017) suggested exploring the possibility of using the enhanced cooperation mechanism under Article 20 of the Treaty on European Union (TEU) to build a strong Social Pillar.

A declaration of principles: the risk of non-implementation

The key issue for the EPSR relates to its enforceability. The ESPN (2016) noted that, while open coordination processes such as the Social OMC and the European Employment Strategy had played a valuable role in coordinating Member States' policies and should be continued, experience had shown that, unless they were backed up by legislation, their impact was limited. Consequently, to facilitate implementation, an additional section on 'Ensuring impact' should be added to the Pillar (ESPN 2016: 31). In the long term, Treaty changes could be foreseen to set up sanction mechanisms for Member States failing to meet social objectives as is the case for economic objectives.

In other words, for virtually all contributors to the consultation (except most employer organisations), the Pillar could not be a mere declaration of principles or good intentions but had to consist of legislation, policy-making mechanisms and financial instruments (European Parliament 2017). Clear accountability mechanisms and sanctions for non-compliance should be foreseen (Eurochild 2016) as well as formalised mechanisms for ensuring the participation of civil society in its implementation (EAPN 2016). Furthermore, adequate mechanisms for linking the implementation of the Pillar to existing instruments and processes such as Europe 2020, the European Semester and the Social Investment Package should be set up (ESPN 2016), as well as instruments for connecting the Pillar to existing international frameworks (*ibid.*). As the European Confederation of Independent Trade Unions (CESI) (2016) suggested, 'meaningful indicators and enforceable benchmarks' (*sic*) should be established in those areas where the EU had no legislative competences. According to the ESPN (2016), areas where it was particularly important to build on the activities already carried out in the framework of the SIP were homelessness and policies relating to children.

The European Parliament (2017) similarly recommended that the EPSR should be 'solid' and should effectively reinforce European citizens' social rights through concrete and specific tools. For instance, the Parliament recommended the establishment of wage floors in the form of a national minimum wage (with due respect for Member State practices and involving the social partners). As for the area of adequate and sustainable social protection, the European Parliament (2017) suggested relying on the exchange of good practices, for instance for calculating minimum pensions. According to the Parliament, adequate financing for the implementation of the Pillar should be ensured at both European and national levels: *inter alia*, the allocation of 20% of national ESF funds for fighting poverty and social exclusion had to be upheld. Without adequate funding the Pillar would not be able to deliver on the 20 principles. Finally, the Parliament maintained that clear targets, building on the Europe 2020 Strategy and the United Nations Sustainable Development Goals (SDG), should be agreed upon.

A Social Pillar subordinated to economic and fiscal goals?

In the view of many, the principles in the preliminary outline of the Pillar were formulated as if they were subordinated to fiscal sustainability, competitiveness and

macro-economic priorities (cf., for instance, EAPN 2016; COFACE 2016a and 2016b; ESPN 2016; Eurochild 2016; Lörcher and Schömann 2016; Seikel 2016). ESPN maintained that the arguments in the preliminary outline were often ‘unduly economic’ and not sufficiently ‘social’. Attention was focused on (financial) sustainability and not on adequacy and, even in the section on social protection, the impression given was that of a Pillar primarily supporting economic and employment objectives, rather than acting as a way to introduce a rights-based language and logic into EU discourses and initiatives (Sabato 2016).

COFACE (2016a) emphasised that the future Pillar should be set firmly ‘in a social policy framework’ and not be understood as an Economic and Monetary Union (EMU) stability instrument. Lörcher and Schömann (2016) even claimed that the Commission saw the Pillar as an economic necessity and not as a political and social imperative.

The risk of unclear formulations and a simple rephrasing of existing rights

Another strand of EPSR criticism concerned the sometimes vague formulation of rights and principles (COFACE 2016a; ESPN 2016; Eurochild 2016; see also Section 1 above). The EPSR frequently simply rephrased existing principles, despite claiming to add to them. The ESPN (2016) went one step further, concluding that the overall vision behind the Pillar was unclear: the initial outline of the EPSR focused on coverage rather than vision, and there was no overarching social policy project. Eurochild (2016) pointed out that there was no reference to specific targets such as the Barcelona targets and Sustainable Development Goals. Perhaps even more importantly, the Europe 2020 targets were not referred to in the initial outline.

The European Federation of National Organisations working with the Homeless (FEANTSA¹⁷ 2016) underlined the risk of the EPSR fostering downward pressure by arbitrarily setting minimum standards in the social area, notably in relation to housing priorities. To avoid such a scenario, the future Pillar should include a statement that the EU would aspire to gradual convergence towards the highest social standards already existing in some countries (ESPN 2016: 8).

The coverage of the initial outline of the Social Pillar: missing dimensions

As for more substantive issues, the ESPN (2016) noted that some areas were underspecified in the Commission’s preliminary outline, while others were simply missing. There was, for example, no reference to the social rights and needs of young people, migrants and asylum seekers. With regard to child policies, the ESPN (2016) proposed that they should be mainstreamed across the various principles of the Pillar, given their importance when it comes to the inter-generational transmission of poverty and social exclusion. Overall, the ESPN (*ibid.*: 10) considered that, in most cases, the main emphasis of the Pillar was on employment rights and the function of social policies in increasing labour market integration¹⁸.

17. The *Fédération Européenne d’Associations Nationales Travaillant avec les Sans-Abri* (FEANTSA) is the only major European network that focuses exclusively on homelessness at European level.

18. As noted by ESPN (2016: 30), ‘At present the Pillar has two essentially ‘employment’ sections and one ‘social protection’ section and even the latter focuses primarily on employment’.

This is particularly evident in the principles concerning unemployment benefits: in the preliminary outline, the primary focus is on ‘the requirement for active job search’ for the unemployed while ‘the duration of benefits shall allow sufficient time for job search whilst preserving incentives for a quick return to employment’ (principle 14). This formulation raised particular concerns in Belgium¹⁹, where the duration of the payment of unemployment benefits is, in principle, unlimited in time²⁰.

Criticism has also been voiced over the fact that the proposed EPSR focuses on individual rights, while collective rights have been left aside to some extent (CESI 2016; Lörcher and Schömann 2016; Seikel 2016). According to the CESI (2016), a truly inclusive approach should be taken to full social partner involvement in the implementation, enforcement, and eventual review of the Pillar. On this point, the European Parliament (2017) recalled that the right to collective bargaining and action was a fundamental right enshrined in EU primary law and invited the Commission to support social dialogue at all levels and in all sectors (while respecting national traditions).

Furthermore, the proposed Pillar is inadequate when it comes to linking environmental and social rights. Indeed, it should be considered that ecosystem resources and human well-being are closely linked and that there is a relationship between poverty and environmental degradation (ESPN 2016). Finally, the Committee of the Regions (2016a and 2016b) called for more attention to be paid to the issue of financing social policies.

The risk of a ‘two-speed’ Europe

Some stakeholders and institutions feared that a focus on the Eurozone would create a ‘two-speed Europe’, potentially leading to a race to the bottom rather than to upward convergence. Lörcher and Schömann (2016) also claimed that such a limited territorial scope could lead to increasing social inequalities and social dumping. The European Parliament (2017) stated that EPSR standards should apply to all countries participating in the Single Market. But it also recognised that Eurozone Member States needed additional specific social standards and targets as well as relevant financial support, open to non-Eurozone Member States on a voluntary basis.

The social partners: conflicting views on the Pillar

The preliminary outline of the Pillar points to the social partners and social dialogue as key (f)actors for the successful implementation of the EPSR and, more generally, of EU socio-economic policies in the European Semester (cf. Sabato *et al.* 2017). Yet looking at the opinions produced by both trade unions and business organisations during the public consultation (BusinessEurope²¹ 2016; ETUC²² 2016; UEAPME²³ 2016), the positions on the proposed Pillar seem very far apart, a circumstance that

19. Belga News (2015) Limiter la durée des allocations de chômage ? Pas à l’ordre du jour, dit Peeters, 5 février 2015 ; La Libre (2011) Limiter dans le temps des allocations de chômage ? 9 juin 2011.

20. The largest party in the federal government, the New Flemish Alliance (N-VA) is in favour of limiting benefits to a two-year period. N-VA is a Flemish nationalist and conservative political party in Belgium.

21. The Confederation of European Business (BusinessEurope) is a lobby group representing enterprises of all sizes in the European Union (EU) and six non-EU European countries

22. The European Trade Union Confederation (ETUC) is the major trade union organisation representing workers at European level.

23. Based in Brussels, the UEAPME is an umbrella group for associations of SMEs.

could constrain implementation. There are indeed different, even opposing views over the Pillar's scope, its level of ambition, the contents of benchmarking exercises, the tools for implementation, and the links to the Better Regulation agenda.

As for the scope and ambition of the Pillar (and of EU-level social policy more broadly), the ETUC (2016) maintained that the Pillar should be ambitious, putting social rights first (these should take precedence over economic freedoms), ensuring quality employment (not just minimum standards) and upward convergence. However, both BusinessEurope (2016) and the European Association of Craft, Small and Medium-sized Enterprises (UEAPME 2016) claimed that the lack of convergence in Europe was not due to a lack of social policies but to the lack of a business-friendly environment. Consequently, instead of adding new rights, the focus should be on implementing structural reforms aimed at enhancing competitiveness and promoting growth-friendly policies²⁴. Furthermore, with respect to the Pillar's level of ambition, BusinessEurope (*ibid.*) was 'strongly concerned' that the Pillar paved the way to changes addressing the gap in EU social legislation by promoting 'common high-level standards'. A point on which the social partners seemed to agree concerns their perplexity over the fact that the Pillar solely targets the Eurozone.

When it comes to benchmarking, both ETUC (2016) and BusinessEurope (2016) also agreed that the Pillar was an opportunity to relaunch and revitalise benchmarking in social policy. Yet, as for the specific topics on which benchmarking should be exercised, positions again diverged. In a report commissioned by the European Trade Union Institute (Peña-Casas 2016), three domains are identified: (a) a minimum wage; (b) industrial relations; and (c) minimum income. For its part, BusinessEurope stressed the importance of monitoring the implementation of the flexicurity principle, proposing five areas for benchmarking²⁵.

As for the tools for implementing the Pillar (and EU social policy in general), ETUC (2016) recommended legislative procedures to upgrade existing legal frameworks and introduce new legislation. When circumstances allowed, non-binding instruments²⁶ should be used. Starting from the premise that the European Semester's Country-specific Recommendations have had a negative effect insofar as they have often led to a deregulation of work and the dismantling of collective bargaining, ETUC (2016) also called for institutional changes to the European Semester to better promote Social Europe and to make the process more collaborative. BusinessEurope (2016) claimed that the EU social acquis was already adequate (with no further legislation needed) and that social benchmarking should support structural reforms promoted through the European Semester.

24. As BusinessEurope (2016: Key messages) put it: 'The focus must be on building on our strengths to increase the contribution of Social Europe to Europe's global competitiveness'.

25. These benchmarking areas are (1) reducing labour costs; (2) ensuring the attractiveness of different forms of employment contract; (3) reinforcing the effectiveness of tax and benefits systems; (4) improving learning outcomes; and (5) promoting efficient and effective social expenditure.

26. Such as decisions, opinions, communications, council recommendations and guidelines.

Summing up stakeholders' opinions reported above, the main criticisms regarding the EPSR initial outline can be recapitulated as follows:

- It has a narrow understanding of the notion of social rights, subordinated to economic growth and jobs (criticism addressed especially by some academic contributors and the NGO community).
- It is primarily conceived for the Eurozone and creates the risk of a 'two-speed' Europe. This point was raised by NGOs, the social partners and institutional players such as the European Parliament.
- There is a risk (underlined by all contributors except for employer organisations) that the Pillar will remain a simple declaration of principles.
- There is a lack of adequate governance arrangements and a roadmap for the implementation of the Pillar, stressed by virtually all contributors.
- Some issues are simply missing from the preliminary outline, as pointed out mostly by academic contributors and NGOs.

3. From the public consultation to a Commission Recommendation

After nine months of public consultation, the announced Commission Recommendation on the EPSR was published in April 2017 (European Commission 2017d). Importantly, the Pillar Recommendation is part of a broader debate initiated on the future of the EU27, following the UK's decision to leave the EU (see Clegg, this volume). A first building block of the unfolding debate is the Commission's White Paper on the Future of Europe, published in March 2017, which puts forward five scenarios²⁷ for Europe by 2025 (European Commission 2017b). Second, there is the Reflection paper on the social dimension of Europe (European Commission 2017c) – symbolically launched on the same day as the EPSR Recommendation. Following the logic of the White Paper, the Reflection paper suggests three options for the future of social Europe: (a) limiting the social dimension to free movement; (b) those who want to do more can do more in the social field; and (c) the EU27 can deepen the social dimension together (European Commission 2017c: 25).

Obviously, the path taken by the Member States regarding the 'Future of Europe' debate will have important implications for the EU's social ambitions in general, and the EPSR more particularly. While the proposed Pillar clearly departs from the 'free movement only' option (a), it is not that easy to attribute the proposed Pillar to either of the two other options of the Reflection paper. As explained above, the Pillar primarily targets Eurozone countries, i.e. coming under the 'those who want to do more' option (b). However, the first Commission initiatives regarding the implementation of the EPSR (notably the 'Pillar package', see below) clearly address the EU 27, i.e. suggesting the 'deepening together' scenario (c).

27. The scenarios in the White Paper are labelled 'Carrying on', 'Nothing but the single market', 'Those who want to do more', 'Doing less more efficiently' and 'Doing much more together' (European Commission 2017b).

The April 2017 EPSR Recommendation is accompanied by a proposal for a Social Scoreboard (European Commission 2017f) made up of 14 headline indicators and a number of secondary indicators. It is intended as a reference framework to monitor societal progress in a tangible, holistic and objective way, easily accessible and understandable to citizens. It aims to detect the most significant employment and social challenges facing the Member States, the EU and the euro area, as well as progress achieved over time. While the proposed indicators by and large cover the EPSR policy domains, a number of important domains are not covered: wage developments, social dialogue and workers' involvement, unemployment and minimum income benefits, pensions and access to some basic services.

To better understand the full significance of the April 2017 Commission Recommendation on the EPSR, one should acknowledge that it is part of a broader 'Pillar package' presented by the Commission that same day (see Box 1)²⁸.

Box 1 The April 2017 Pillar 'package'

The EPSR Recommendation was accompanied, amongst others, by:

- a Commission Communication explaining the rationale and nature of the Pillar (European Commission 2017d);
- a Proposal for a joint proclamation of the Pillar (European Commission, 2017e);
- a Proposal for a Directive on work-life balance for parents and carers and an accompanying Communication;
- a proposal for a Social Scoreboard underpinning the Pillar;
- several (highly relevant) Staff Working Documents²⁸;
- a first-stage consultation of the European social partners on access to social protection for all employment types;
- a first-stage consultation of the European social partners on the Written Statement Directive; and
- an interpretative Communication and Staff Working Document on the Working Time Directive.

Comparing the outline with the EPSR Recommendation, many changes regarding the substance and wording of some of the chapters and principles are noticeable. While in the initial outline the third Chapter was entitled 'Adequate and sustainable social protection', this became 'Social protection and inclusion' in the final Recommendation, thus re-introducing the concept of 'social inclusion' – a key aspect of EU social policymaking since the 1990s – and dropping the problematic notion of 'sustainability'. As regards the wording of the 20 general principles, some significant changes have been made, as listed in Table 2.

28. All documents related to the EPSR can be accessed from https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

29. These Staff Working Documents explain each of the principles and the changes introduced by the Pillar; summarise the public consultation; take stock of the 'Investing in Children Recommendation'; describe recent economic, employment and social trends etc.

Table 2 **The 20 principles of the EPSR: comparing the 2017 Recommendation and the 2016 preliminary outline**

EPSR Recommendation (2017)	EPSR preliminary outline (2016)
1. Education, training* and life-long learning	Skills , education and lifelong learning (1**)
2. Gender equality	Gender equality and work life balance (5)
3. Equal opportunities	Equal opportunities (6)
4. Active support to employment	Active support to employment (4)
5. Secure and adaptable employment	Flexible and secure labour contracts (2) Conditions of employment (7)
6. Wages	Wages (8)
7. Information about employment conditions and protection in case of dismissals	Conditions of employment (7)
8. Social dialogue and involvement of workers	Social dialogue and involvement of workers (10)
9. Work-life balance	Gender equality and work life balance (5)
10. Healthy, safe and well-adapted work environment and data protection	Health and safety at work (9)
11. Childcare and support to children	Childcare (18)
12. Social protection	Integrated social benefits and services (11)
13. Unemployment benefits	Unemployment benefits (14)
14. Minimum income	Minimum income (15)
15. Old age income and pensions	Pensions (13)
16. Health care	Healthcare and sickness benefits (12)
17. Inclusion of people with disabilities	Disability (16)
18. Long-term care	Long-term care (17)
19. Housing and assistance for the homeless	Housing (19)
20. Access to essential services	Access to essential services (20)

Source: adapted from European Commission 2016b and European Commission 2017a.

* Changes between the two versions of the EPSR are indicated in bold.

** Corresponding number of the principle in the EPSR preliminary outline.

While eight of the twenty principles remained unchanged, other amendments were basically cosmetic: one principle was split³⁰, several were simply renamed³¹, while others were merged³². There were however also some significant changes: as we will

30. Gender equality and work-life balance became separate principles.

31. Thus, 'conditions of employment' became 'information about employment conditions and protection in case of dismissals'; 'disability' became 'Inclusion of people with disabilities'.

32. 'Flexible and secure labour contracts' and 'conditions of employment' became 'secure and adaptable employment'.

discuss below, the scope of several principles was enlarged³³, while one principle was reduced in scope³⁴. Finally, one principle was added and one dropped from the list. The section below discusses the changes between the two versions of the Pillar in detail.

3.1 Equal opportunities and access to the labour market

As regards the first chapter of the EPSR, the following changes stand out. Important additions in the 2017 Recommendation, when compared to the 2016 initial outline, are marked in **bold**.

3.1.1 Education, training and life-long learning

According to the 2017 Recommendation, everyone has the right to quality **and inclusive** education, training and life-long learning in order to maintain and acquire skills (the initial outline merely referred to ‘basic’ skills) that enable them to participate **fully** (‘actively’ in the initial outline) in society and successfully manage transitions in the labour market. The reference in the EPSR initial outline to ‘low skilled young people and working age adults shall be encouraged to up-grade their skills’ has been dropped in the Recommendation.

3.1.2 Gender equality

Gender equality became a standalone principle in the 2017 Recommendation, separate from work-life balance³⁵. In comparison to the EPSR initial outline, there is a stronger affirmation that women and men **have the right to equal pay for work of equal value**. By contrast, the reference to ‘addressing barriers to women’s participation and preventing occupational segregation’ in the initial outline has been dropped.

3.1.3 Equal opportunities

The principle of equal opportunities has been considerably strengthened in the Recommendation. First of all, **everyone** (and not only ‘under-represented groups’) has **the right** to equal treatment and opportunities regarding employment, **social protection, education, and access to goods and services** (and not only with regard to the labour market) available to the public. This right now applies **regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation** (which were mentioned in the introduction to this principle in the EPSR initial outline, but not in the principle itself). The reference to enhancing equal treatment by ‘raising awareness and addressing discrimination’ has been dropped.

3.1.4 Active support to employment

Entitlements to active support to employment for different categories of people have been relabelled as ‘**rights**’ in the Recommendation. **Everyone** (and not only ‘working age persons’) has the right to timely and tailor-made assistance to improve employment

33. Thus, ‘training’ was added to the first principle on education and life-long learning; ‘well-adapted work environment and data protection’ was added to the Principle on health and safety; ‘support to children’ was added to ‘childcare’; ‘old age income was added to pensions’; ‘assistance for the homeless was added to housing’.

34. Indeed, ‘sickness benefits’ was dropped from the Principle on healthcare.

35. Work-life balance has been moved to Chapter 2 in the EPSR Recommendation.

or self-employment prospects. The reference in the initial outline to the identification of a ‘single point of contact’ has been dropped.

3.2 Fair working conditions

As regards the second chapter of the Pillar, the following changes (in bold) stand out when comparing the two text versions.

3.2.1 Secure and adaptable employment

The wording of this principle has been considerably enhanced in the 2017 Recommendation: in the new formulation, workers **have the right to fair and equal** treatment, regardless of the **type and duration** of the employment relationship, while secure employment now also includes **access to social protection and training**. Abuse of atypical contracts shall be **prohibited** (and not simply ‘prevented’). A new section stipulates that **innovative forms of work** shall be fostered and that **entrepreneurship, self-employment and occupational mobility** will be encouraged. The ambiguous notion of fostering ‘transition towards open-ended forms of employment’ – during the consultation the Polish government, amongst others, underlined that it was unclear what contracts it referred to – has been maintained.

3.2.2 Wages

Importantly, the need to set wages in a transparent and predictable way has been enlarged to **all wages** (not only the ‘minimum wage’). There is also a stronger reference to **preventing** in-work poverty, while **adequate** minimum wages should provide for the **satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions**. The notion of safeguarding ‘the motivation’ to seek work was replaced by **incentives** to do so. It should be pointed out that the highly contested reference in the EPSR preliminary outline to the evolution of wages ‘in line with productivity developments’ has been dropped in the 2017 Recommendation.

3.2.3 Information about employment conditions and protection in case of dismissals

The contents of this principle remained largely unchanged but, again, the entitlements have been reworded (when compared to the initial outline) as the **right** of workers to be informed in writing at the start of employment about their rights and obligations.

3.2.4 Social dialogue and involvement of workers

The Recommendation extends the right of social partners to be consulted on **economic** policies, (in addition to employment and social policies), but now nuances that this should happen **according to national practices**. The principle adds a reference to the implementation **at the level of the Union and its Member States** of the agreements concluded between the social partners. An important addition in the 2017 Recommendation is that **‘support for increased capacity of social partners to promote social dialogue shall be encouraged’**. The explicit reference to information and consultation of workers working digitally and/or operating across borders in the EPSR preliminary outline has been dropped.

3.2.5 Work-life balance

As mentioned above, work-life balance became a principle per se in the Recommendation, separate from gender equality. Access to suitable leave, flexible working arrangements and access to care services is now framed as a **right** for parents and people with caring responsibilities. In the Recommendation, women and men **shall have equal access** to special leave of absence (the EPSR preliminary outline merely refers to ‘encouraging equal use’). The specific reference to ‘measures such as the provision of remunerated leave for parents’ (to encourage the equal use of leave arrangements between sexes) found in the EPSR preliminary outline has been dropped.

3.2.6 Healthy, safe and well-adapted work environment and data protection

This principle has been significantly broadened to include: (a) the right of a working environment **adapted** to workers’ professional needs and which enables them to **prolong their participation** in the labour market; and (b) the right for workers to have their **data protected** in the employment context. While the preliminary outline referred to an ‘adequate’ level of protection, the Recommendation now refers to a **high** level of protection of their health and safety at work. By contrast, the reference in the EPSR preliminary outline to ‘support for implementation, notable in micro and small enterprises’ has been dropped.

3.3 Social protection and inclusion

The following changes (in bold) stand out in Chapter III, when comparing the 2016 EPSR proposal and the 2017 Recommendation.

3.3.1 Childcare and support to children

Childcare has been moved to the top of the list of principles of Chapter III, its scope has been broadened to include ‘**support to children**’, and childcare services have been expanded to **early childhood education and care**, while entitlements have been reframed as ‘**rights**’. By contrast, the reference in the EPSR preliminary outline to provision by ‘adequately qualified professionals’ has been dropped. While the initial outline proposed specific measures ‘to encourage attendance’ of children with disadvantaged backgrounds, these measures are now supposed to ‘**enhance equal opportunities**’ among such children.

3.3.2 Social protection

Perhaps the most significant change in the 2017 Recommendation is that a new principle on the **right to adequate social protection** for workers (**regardless of the type and duration of their employment relationship**) has been added. The principle explicitly refers to the right of adequate social protection for the **self-employed**.

3.3.3 Unemployment benefits

While the initial outline of the Pillar emphasised the requirement for the unemployed to actively search for a job, the 2017 Recommendation begins by clearly affirming the **right to adequate activation support from public employment services**.

Unemployment benefits should still be ‘of reasonable duration’, while **not constituting a disincentive** for a quick return to employment.

3.3.4 Minimum income

The entitlement to a minimum income has been reframed as a **right** in the 2017 Recommendation: the purpose is no longer to ensure a decent standard of living, but rather to enjoy a **life in dignity at all stages of life and effective access to enabling goods and services**, i.e. a more ambitious wording than existing EU commitments. What gives rise to concern among some stakeholders is that the accompanying Staff Working Document explains that minimum income beneficiaries should ‘be available for work or participate in community activities’ (European Commission 2017f: 56). One can indeed wonder whether this would also encompass (unpaid) ‘community services’. As regards the requirements for the labour market integration of minimum income beneficiaries, this is now directed (more restrictively) at **those who can work**, and no longer (more generally) at ‘those of working age’ (in the preliminary outline).

3.3.5 Old age income and pensions

The principle on pensions has been enlarged to take into account the broader issue of **old age income**. Entitlements to pensions have been reframed as a **right** applying equally to both **workers and the self-employed, and to women and men**. An adequate pension is now aimed at ensuring a **life in dignity** (rather than a decent standard of living). By contrast, the explicit reference in the EPSR preliminary outline to addressing the gender pension gap, including ‘by adequately crediting care periods’, has been dropped. Interestingly, in the 2017 Pillar Recommendation, the highly contested reference to the ‘sustainability and future adequacy’ of the pension system (e.g. by ensuring a broad contribution base and linking statutory retirement age to life expectancy and avoiding early exit from the labour market) has disappeared. This arguably happened as a result of culminated Member State (incl. Ireland and Poland), trade union (ETUC, the European Federation of Food, Agriculture and Tourism Trade Unions, EFFAT) and NGOs’ (e.g. the Social Platform and the European Social Insurance Platform) fierce opposition to the recurrent ‘EU ideology’ of linking the statutory retirement age to life expectancy.

3.3.6 Healthcare

The principle on healthcare has been shortened and simplified when compared to the Initial outline: everyone **has the right** to timely access to **affordable**, preventive and curative healthcare of good quality. Interestingly, references to ‘cost-effectiveness’ and the financial sustainability of healthcare have been dropped, as has the reference to the fact that ‘the need for healthcare shall not lead to poverty or financial strain’. Importantly, the principle from the EPSR preliminary outline that all workers (including the self-employed), regardless of contract type, are ensured adequately paid sick leave during periods of illness, was completely dropped from the 2017 Recommendation. During the public consultation, employer associations³⁶ as well as the Dutch, Irish and Polish Governments and the Committee of the Regions had emphasised the need to

36. BusinessEurope ‘argued that sickness benefits coverage across all contract types can create undue burdens on employers to finance sick leave’, European Commission (2017g).

take account of various national systems and not impose an EU-wide one-size-fits-all solution for the principle on healthcare and sickness benefits (European Commission, 2017g). Also, the reference to ‘affordable’ access to services and healthcare met with Member State resistance and was dropped.

3.3.7 Inclusion of people with disabilities

The entitlements for people with disabilities have been reformulated as a **right to income support** (and not merely ‘basic income security’) which allows **living in dignity** (and not merely a decent standard of living, as was formulated in the initial outline). The reference to ‘**a work environment adapted to their needs**’ has been added while the reference to ‘conditions of benefit receipt shall not create barriers to employment’ has been dropped.

3.3.8 Long-term care

In the principle on long-term care – everyone has the right to affordable long-term care services of good quality – a reference to **community-based services** has been added. By contrast, the reference to the financial sustainability of care was omitted, as was the provision that care should be provided by ‘adequately qualified professionals’.

3.3.9 Housing

The principle that access to social housing or housing assistance of good quality should be provided for those in need remained largely unchanged. However, protection against forced eviction is now formulated as a **right**. References in the preliminary outline to support for low and medium income households to access home ownership have been dropped.

3.3.10 Access to essential services

Access to essential services of good quality has been reformulated as a **right**. Importantly, **water and sanitation** have been added to the list of essential services to be guaranteed. Note however that the reference to ‘affordable’ access has been dropped from the Recommendation.

3.4 Chasing two rabbits: strengthening rights and reducing prescriptions

Against this backdrop, the question is: *how significant are the changes between the two versions of the Pillar? And to what extent have the remarks made by key stakeholders been taken into account in the Commission Recommendation?*

To start with, the *scope* of the Pillar Recommendation is limited to Eurozone countries, with the possibility for other Member States to adhere on a voluntary basis. However, as highlighted above, the first initiatives adopted by the European Commission in the framework of the Pillar in fact concern the EU 27. The *governance arrangements* for implementing the EPSR have not been addressed in the Recommendation in a satisfactory way: a clear implementation roadmap is missing, as are arrangements to involve the social partners and, for some matters, social NGOs.

And yet the paragraphs above make it clear to the reader that there are indeed significant differences between the 2016 and 2017 versions of the proposed EPSR. Perhaps the most striking difference is that most of the general principles in the preliminary EPSR have been relabelled as ‘rights’ in the 2017 Recommendation³⁷, thus introducing a rights-based language. The coming months will show whether this has been a ‘discursive turn’ only or whether it marks a real change in the EU’s approach to social policy. While several stakeholders raised their fears during the consultation that the Pillar would remain a simple *declaration of principles*, it should be noted that a number of concrete initiatives have already been taken by the European Commission (*inter alia* as part of the Pillar Package). The success of these initiatives and their consistency with the principles stated in the Pillar will need to be assessed carefully.

When comparing the 2016 initial outline and the 2017 Recommendation, it is also evident that some principles have been considerably strengthened in terms of their scope and ambition, including the new reference to ‘living in dignity’ (in the case of minimum income, pensions and invalidity) and the need to support the capacity of social partners to promote social dialogue³⁸. It should be noted however that, for now, some of the key players involved in the implementation of the Pillar (including the social partners) have very diverging opinions as regards the next steps to be taken.

Significantly, some more prescriptive principles have been dropped from the 2017 Recommendation: this is true for the principle that all workers be ensured adequately paid sick leave during periods of illness; and for the stipulations in the initial outline that both childcare and long-term care should be provided by ‘adequately qualified professionals’. As explained above, references to ‘cost-effectiveness’ and the financial sustainability of healthcare and the sustainability and future adequacy of the pension system have equally been dropped from the EPSR Recommendation. Some of the more ‘prescriptive’ stipulations of the initial outline have also been omitted: addressing barriers to women’s participation and preventing occupational segregation; the reference to single points of contact; the provision of remunerated leave for parents; crediting care periods to reduce the gender pension gap³⁹.

Also, principles addressing specific groups did not make it into the 2017 Recommendation: low-skilled young people and working age adults⁴⁰; and low and medium income households in the principle on housing. At least in terms of discourse, the April 2017 Pillar package is underpinned in a more balanced way with both social and economic arguments. Maintaining the notion of ‘transition towards open-ended forms

37. This is amongst others the case for the right to minimum income, pensions and healthcare, to community-based services (long-term care), to income support, to protection against forced eviction; effective access to enabling goods and services; the right to adequate activation support and to adequate social protection; the right to child care, equal pay, active support to employment, fair and equal treatment; the right to support to children, early childhood education and care, to education, access to goods and services and data protection.

38. Other examples include quality ‘and inclusive’ education; participate ‘fully’ (versus actively) in society; water and sanitation as new essential services; a work environment adapted to people’s needs (invalidity); and equal opportunities now include social protection; a ‘high’ level of protection of health and safety at work.

39. EuroCommerce made it very clear that this issue remains ‘the sole responsibility of Member States, and we see no role for EU action in this area’.

40. BusinessEurope considered that even if it is necessary to look at low-skilled young people and working age adults, ‘the focus should not be so narrow’.

of employment' in the Recommendation seems to suit the trade union agenda, as does dropping the stipulation that wages should evolve 'in line with productivity developments' (only present in the initial outline). And yet, the business world also has its share of amendments: innovative forms of work shall be fostered and entrepreneurship, self-employment and occupational mobility will be encouraged. More generally, the 2017 Recommendation puts a lot of emphasis on the rights of the self-employed.

In sum, it would seem that the 2016 consultation process has been taken seriously by the European Commission and that a number of proposals advanced by stakeholders have been taken on board in the 2017 Recommendation. The Commission seems to be chasing two rabbits: on the one hand strengthening the emphasis on 'rights', while cutting the 'red tape' on more detailed prescriptions. The fact that some important policy areas were missing in the initial outline – such as the rights of refugees and asylum seekers, a specific principle on young people, a section on financing social policy and the link between social and environmental rights – has not been corrected in the Recommendation, despite stakeholders' efforts to raise them to the Commission's attention.

Conclusion: the Social Pillar as a new start for (social) Europe?

The public debate in 2016 on the preliminary outline of the European Pillar of Social Rights was very large and lively, with a series of (often critical) issues emerging. First, there are the risks of *raising excessive expectations* and *enshrining in the Pillar a narrow understanding* of the concept of social rights. Second, several observers have stressed the limitations of a draft Pillar where social objectives seem to be *subordinated to economic and fiscal goals*. Third, concerns have been raised that the *formulation of the rights at stake is rather vague* and that, in some cases, existing rights have simply been rephrased. Furthermore, some doubts are due to the absence of links with other policy frameworks (e.g. the SIP). Fourth, there is the issue of the *legal status and of the (lack) of EU competences*, which could limit the possibilities for effectively implementing the EPSR. In other words, there is a risk that the Pillar may end up being a 'paper tiger', little more than a simple declaration of principles. Fifth, not all players agree on the need to limit the Pillar to the Eurozone countries, which entails *the risk of a 'two-speed Europe'*. Finally, there are *divergent views on the Pillar from the social partners*, key players in any implementation.

The EPSR should not be a simple declaration of principles, but rather an enforceable instrument implemented through legislative and non-legislative initiatives. Given the current social and political situation, a clear sense of urgency exists: the EPSR is arguably the last chance for the EU to show its 'caring face' (Vandenbroucke with Vanhercke 2014) to citizens. A weak Pillar, or a Pillar subordinated to economic and fiscal goals and unable to address social shortcomings and rising inequality would indeed be counterproductive, in that it would (a) further increase the sense of disaffection and disillusion felt towards the European project by many citizens, especially the most vulnerable, and (b) provide an additional argument at national level to reduce social rights and to justify the retrenchment of social protection schemes. This would foster negative processes encouraged by Euro-sceptical political movements, possibly leading

to the disintegration of the EU and, eventually, to political instability and risks for the very survival of the European project.

As shown above, the 2017 Recommendation on the Pillar has taken up some of the substantive considerations and criticisms emerging from the consultation. Nevertheless, issues related to the Pillar's governance and implementation, such as its links to the European Semester and the Social Investment Package, have not been adequately addressed. However, looking at the initiatives tabled at the same time as the Recommendation, the Pillar seems to have already promoted renewed Commission dynamism in the social domain. Meeting at the Gothenburg Social Summit for Fair Jobs and Growth on 17 November 2017, Heads of State and Government, social partners, and national and EU policymakers should seize the opportunity to put social considerations at the heart of EU and national policymaking by unanimously endorsing the European Pillar of Social Rights.

In our opinion, the Pillar constitutes a milestone in EU social policy, a development with implications going beyond social policy. While the objectives of EU social policies – as well as the values on which they rely – have already been stated in the Treaties, the preliminary outline of the Pillar transforms these objectives and values into 'principles'. The 2017 Recommendation of the Pillar goes a step further by explicitly labelling these principles as 'rights' for European citizens. This is however not sufficient. Indeed, in order to make the Pillar effective, an essential further step is needed: turning the rights stated on paper into effective and enforceable rights, guiding action at both EU and Member State level and ensuring that every European citizen has access to them. At any price, we need to avoid the proverb 'Parturient montes, nascetur ridiculus mus' coming true (Horace, 1st century AD)⁴¹.

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Part II

Day-to-day policymaking in the European Union

Chapter 5

The EU's economic governance in 2016: beyond austerity?

Amandine Crespy and Vivien A. Schmidt

Introduction

After an initial phase of firefighting against the sovereign debt crisis that began in 2010, characterized by policies focused on strict austerity and structural reforms, the European Commission headed by Jean-Claude Juncker as of November 2014 sought to go beyond what some observers called 'austeritarianism' (Hyman 2015), the top-down enforcement of austerity. The Five President Report¹ was an attempt to provide a post-crisis management *political* response to the weaknesses of the Eurozone by calling for the completion of a 'genuine monetary union' which would allow for more 'convergence, prosperity and social cohesion'. At the same time, a number of procedural and policy aspects of the European Semester² were altered in order to address its lack of effectiveness (output legitimacy) in relaunching European economies, its weak democratic credentials (input legitimacy) and its poor transparency, accountability, and openness (throughput legitimacy) (Schmidt 2013, 2015 and 2016). In a previous edition of *Social Policy in the European Union*, Zeitlin and Vanhercke (2015) noted that, by 2015, the European Semester had undergone a process of 'socialization' but remained cautious with regard to the actual outcomes and how much more social cohesion-friendly policymaking had occurred or would be forthcoming.

Against this background, this chapter investigates to what extent the double shift in policy and governance initiated in late 2014, consolidated in 2015 bore fruit in 2016. In brief, we ask whether, eight years into the Eurozone crisis, EU and domestic policymakers have succeeded in agreeing on policies and governance procedures that take them beyond the collective bureaucratic management of austerity. To elucidate this question, we investigate three broad issues pertaining to socio-economic governance in the EU. In the first section, we assess to what extent the European Semester has moved from austerity to investment by looking at the discourses, policy recipes and implementation. The second section examines the opportunities and challenges raised in 2016 for promoting upward economic and social convergence in the Eurozone. The third section deals with the issue of power and democracy by looking at the politics of the European Semester. Section 4 concludes and looks ahead.

1. 'Completing Europe's Economic and Monetary Union', Report by Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, 22 June 2015.
2. The European Semester is a broad, hybrid governance framework set up since 2010 which aims at containing debt and deficit levels as well as steering structural reforms in the realm of macro-economic and social policy. It does so by a combination of stringent regulations and soft coordination as well as by a combination of bureaucratic surveillance by the European Commission and multilateral political control by the Council.

1. From austerity to investment? In search of progressive structural reforms

1.1 Fiscal flexibility and the turn to investment

A turn in discourse

When it took office in November 2014, the Commission led by Jean-Claude Juncker initiated a shift in discourse away from fiscal consolidation towards investment. While structural reforms were central from the outset, the new catchword is ‘upward convergence’, thus signalling that structural reforms are not the equivalent of social regression. Most recently, however, this language has been somewhat altered, in the 2017 AGS issued at the end of 2016. While ‘boosting investment’ remains the first objective, the emphasis is now put on improving the financial sector and tackling barriers to investment in the Member States together with boosting the European Funds for Strategic Investment and looking for investment opportunities from abroad. Meanwhile, the notion of social investment (European Commission 2013) has disappeared, although social policy concerns remain and are included under the rubric of structural reforms, focusing on how reforms (mainly education and training and the re-design of social protection) can generate incentives and increase the level of employment. The Commission and the Council stress the concept of having a ‘positive fiscal stance’ (European Commission 2016a) which refers to a specific strategy that is neither restrictive (read: austerity) nor fully ‘expansionary’ (read: Keynesian-type of spending). While it identifies the euro area fiscal policy as ‘broadly neutral’ over 2014-2017, the Commission calls for a stronger differentiation according to Member States and the possible use of more ‘active’ fiscal policies when appropriate. In other words, the Commission wants to achieve an overall balance and convergence in competitiveness and welfare by tackling what it considers as a ‘telling paradox: those who do not have fiscal space want to use it; those who have fiscal space do not want to use it’ (European Commission 2016a: 3).

More flexibility on fiscal discipline

From 2014 onwards, in the face of stagnating growth and rising social inequalities as a result of austerity, the European Commission gradually introduced more flexibility in its ‘governing by the rules and ruling by the numbers’ (Schmidt 2015a and 2016). The Six Pack regulations increased Commission discretion in evaluating a Member State’s fiscal position by enabling it to take into account the ‘range of relevant factors’ when judging non-compliance, including mitigating or aggravating ones, along with ‘exceptional circumstances’ (Mabbett and Schelkle 2014: 12-13). The fact that calculations became central to these procedures gave way to a ‘politics of numbers’ that has raised questions about the ‘accounting’ end of flexibility as well as the Commission’s accountability. One such example has been the change to calculating the deficit in terms of a ‘primary’ surplus (deficit minus interest payments). This enabled the Commission to allow countries that posted a primary surplus to delay rapid deficit reduction in order to propel growth, which is why France and Italy were given two-year delays to meet their targets, first in 2013 and again in 2015.

In response to criticism of the Commission's discretionary decisions and increased flexibility by Northern creditor countries and proponents of stability, the practice of flexible fiscal discipline was clarified in a Commission communication entitled *Making the best use of the flexibility within the existing rules of the Stability and Growth Pact* (European Commission 2015). Three clauses were codified: a) the 'investment clause'³: Member States' contributions to EU-linked investment projects shall not be counted in deficit and debt calculation (with more specific conditions for countries under the EDP), b) a 'structural reform clause' excludes the costs of such reforms from deficit calculation if said reforms are 'major', 'fully implemented' and foreseen to 'have long-term positive budgetary effects, including by raising potential sustainable growth', c) the 'cyclical conditions clause' stipulates that the fiscal effort should be 'modulated' with respect to economic cycles and possible economic downturns. Without further specifications, these rules leave a great deal to interpretation.

Controversy arose in 2016 when the Commission started to use the flexibility clauses to grant Southern European countries more leeway in their trajectory towards fiscal discipline. Unprecedented budgetary flexibility was granted to Italy, while decisions for Spain and Portugal were delayed until after the Spanish election in June. Under pressure from Germany and the Netherlands, which criticized the lack of credibility of the EU rules, the Commission and Council triggered procedures leading to sanctions. These, however, were only symbolic moves, as no proper fines were demanded by the EU. When France was also granted more time to meet the fiscal targets under the Stability and Growth Pact (SGP) – for at least the third time since 2012 – President Juncker's statement that it was justified 'because it's France' triggered controversy and bitter criticism from the Dutch Finance Minister Dijsselbloem in particular (European Parliament 2016a). In contrast, the European Parliament considered, in its 2016 resolution reviewing the European Semester, that investment was still lagging behind and that a greater use of the flexibility clauses of the SGP should be made (European Parliament 2016b). In brief, the European Commission has introduced flexibility clauses to loosen fiscal discipline, notably under the pressure of President Hollande and Prime Minister Renzi (beginning in 2014). But their actual use has proved to be a dangerous political game for the Commission, which has to manage disagreements between debtor and creditor countries.

Modest progress on the investment front

Stimulating investment has been the main pillar of the Juncker Commission's strategy. In June 2016, the European Commission launched the 'Juncker Plan 2.0'⁴ which extends the initial €300 bn objective over 3 years to a global objective of €500 bn over 5 years, i.e. by 2020. The resources taken from EU budget lines under the EU's Research and Innovation programme Horizon 2020, transport and infrastructure provide guarantees allowing the European Investment Bank to fund innovative and risky projects co-financed by public and private entities. By December 2016, the European Funds for Strategic Investment served to support 361 projects approved for a total of €27,5 bn, i.e.

3. Eligible investments are national expenditures on projects co-funded by the EU under the Structural and Cohesion policy, Trans-European Networks and the Connecting Europe Facility, as well as national co-financing of projects also co-financed by the European Fund for Strategic Investments.
4. European Fund for Strategic Investments and a new European External Investment Plan from September 2016.

around €154 billion of total investment (European Commission 2016). This involved 151 infrastructure projects and 234 small and medium enterprises financing agreements.

Although the amount of investment to date may appear to represent a promising start to the initiative, a number of assessments question the leverage capacity of the EFSI for boosting genuinely new and risky investment. First, one year after its set up, the plan had benefited projects mostly from Western and larger countries in particular France, Germany, Italy, Spain and the United Kingdom (Willermain and Genard 2016). Secondly, from the 57 projects approved in May 2016, 42 were found to be very similar to the types of projects that have been funded by the European Investment Bank (EIB) in the past (Claeys and Leandro 2016). Finally, the plan has been criticized for failing to leverage enough private investment. When Members of the European Parliament (MEP) debated the plan's achievements in June 2016, only the European People's Party (EPP) was entirely satisfied with it. The President of the Progressive Alliance of Socialists and Democrats (S&D) group Gianelli Pitella, like other observers, critiqued the Plan on the grounds that it should support additional projects rather than organizing a reshuffling of EU resources to support projects that would have been funded anyway, and maintained that the EIB should accept a higher degree of risk. Other groups were even more critical, with the general view being that the Juncker plan falls short of being a sufficient response to the deep stagnation faced by the EU. As a matter of fact, both public and private investment are still too weak in Europe. In 18 Member States, public investment ranges from sharp decline to stagnation compared to its average level in the 1995-2007 period (ECB 2016).

1.2 The continued neo-liberal bias of structural reforms

The granting of more flexibility on fiscal discipline involved a sort of bargain for promoting the further implementation of the structural reforms advocated in the framework of the European Semester. To be sure, the notion of structural reforms has had a floating and ambiguous meaning since the first 'adjustment programmes' were promoted by the International Monetary Fund and the World Bank in various parts of the world. It has covered eclectic – if not contradictory – policy ideas in the European Semester accompanied by a discursive turn that went from promoting strict austerity and structural reforms towards more fiscal flexibility and (social) investment. That said, structural reforms exhibit a persistent core consisting of typically neoliberal policy recipes that have been present since the heyday of neoliberalism: the liberalization of products and services markets, the deregulation of labour markets and 'rationalization' of welfare systems, and public administration reform.

Labour market reforms: flexibility without security?

The European Semester focuses very strongly on labour market reforms, which consistently account for the largest share of all CSRs ranging from 18 to 30% of all CSRs, followed by pension and healthcare reform (from 9 to 16%) (Crespy and Vanheuverzwijn forthcoming). The reforms advocated all emphasize the need to create incentives for raising levels of employment. The understanding of how to promote modernization of labour markets focuses on two (arguably) problematic assumptions. The first is that

it would be sufficient to 'activate', typically through better education and training or incentives stemming from the tax and the social system, for workers to go back into employment. This ignores the fact that the very slow rate of increase in economic activity, which links to low demand for new workers, may be the real culprit. The second (somewhat naïve) assumption is that national governments will implement politically as much as economically costly policies against the background of the fiscal discipline pillar of the Semester, including those with little room for fiscal manoeuvre (i.e., those with or at risk of excessive deficit, debt, or macroeconomic imbalance).

EU-related pressure for labour market reform has had an effect, in particular in Member States that had not been very successful in pushing through such reforms prior to the crisis. The Italian Jobs Act from 2015 and the French El Khomri Law on Work from 2016⁵ as well as the reform of labour law passed by decree in September 2017 by Emmanuel Macron's government are cases in point. While resulting in a breakthrough with regard to increasing the flexibility of labour markets, progress in terms of new rights or security is meagre. Moreover, in both countries, there is no evidence that education and training systems, or unemployment services, have been significantly improved⁶. As inequalities are on the rise in most EU countries, it appears that a) in-work poverty becomes more prevalent as a result of part-time and temporary jobs (European Parliament Research Service 2016: 11-12) and b) the reforms of the welfare states through the prism of so-called active labour market policies 'operate mainly through the reduction of security for insiders, not by increasing job security for outsiders' (Arpe *et al.* 2015: 50).

Social investment

To gain a fuller understanding of the strategy promoted through the European Semester and its effects, it is useful to consider more closely all CSRs adopted since 2011 to see whether a strategy of social retrenchment or social investment wins out (Crespy and Vanheuverzwijn forthcoming). First, it is hard to speak of a shift from a strategy of social retrenchment towards social investment, since a careful coding of the CSRs shows that, from the outset, structural reforms have served to simultaneously urge the Member State to proceed with social retrenchment *and* social investment policies. Secondly, we observe that the share of the former tends to decrease over time while CSRs related to the latter have increased from 2011 to 2016. Counter-intuitively, this may not point to a major shift towards social investment. This is because the more governments embrace reforms rooted in social retrenchment (e.g. pension reform), the less likely are they to receive CSR's in that area in the following years, leading almost mechanically to a greater salience of social investment solutions. Moreover, our suspicion is confirmed by the fact that, while the salience of social investment CSRs has increased over time, the level of CSR implementation has steadily decreased from about 40-45% in 2011 to approximately 25% in 2014 (Darvas and Leandro 2016).

5. *Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.*

6. This is pointed out in the CSRs of both countries in 2017. The reform of education and training (especially vocational training) has been a major plea during his campaign of the newly elected French President Emmanuel Macron.

Thus, the ideological bias combined with the implementation bias of the Semester only reinforces a fundamental structural feature of EU socio-economic governance inherited from the past. Whereas Country-specific Recommendations pertaining to fiscal discipline remain potentially constraining (with sanctions always possible) under the revised SGP regime, the CSR's urging the Member States to engage with social investment remain optional, and in fact are largely wishful thinking in the absence of sufficient fiscal space and a – still absent – coherent discourse about the economic efficiency and political desirability of social investment.

As a result, worrisome imbalances are still to be observed in significant parts of Europe. Trying to assess to what extent the various EU countries deal with social protection – in terms of either a classical transfer-based or an innovative investment-based strategy – is primarily a matter of evaluating their recovery after a period of implementing austerity packages and cutting welfare states across the board from 2010 to 2013. EU rules and policies exert significant constraints on domestic reforms and ‘while the paradigm of fiscal austerity and pressure on social standards has dominated the reform process in all the countries under scrutiny, its actual implementation has varied from one country to the other’ (Agostini *et al.* 2016: 109-110, see also Bouget *et al.* 2015: 12). In 2013, actual support through activation policies reached the level of more than 30% of the active population in only 8 EU countries (Dhéret and Franssen 2017: 23). More generally, social investment has not materialised into an explicit ‘new’ political agenda promoted by the EU institutions. Researchers observe that social investment policies are mostly present in those Member States which have historically more robust continental welfare states in continental Europe and Scandinavia which have therefore been more resilient in the face of the great recession (Bouget *et al.* 2015). In the other countries, the resources provided by the EU structural funds do not suffice to compensate the effects of fiscal discipline.

Finally, with regard to more general EU policies, efforts have been being made to direct resources from various existing EU funds⁷ towards social investment. By doing so, though, the European Commission has been pursuing ‘social innovation’, that is an approach essentially aimed at the marketization strategy consisting in outsourcing welfare policies to a policy environment characterized by a de-politicized vision of resource allocation, technocratic project-based management and, possibly, profit-seeking.

2. Upward convergence. Debates and challenges

2.1 To tackle or not to tackle social dumping?

In October 2016, the European Commission put forward a legislative initiative for revising the Directive on Posted Workers from 1996. The initiative aims at tackling violations of labour law and the absence of a level playing field among the Member States as far as wages and social protection are concerned. By doing so, the Commission operationalized the plea to tackle ‘social dumping’ in the enlarged Union made by Jean-

7. Essentially the European Social Fund and the European Structural and Investment Fund.

Claude Juncker in his programme as he was running the Commission's presidency. This addressed the concerns raised notably by France and Germany against the background of rapidly increasing use of posting at a rapid pace, with a 44% increase compared with 2010 (European Commission 2016c). The revision of the Directive proposed by the Commission foresees establishing an equal remuneration between posted and local workers, to extend the rules of posting to temporary workers, and to limit the posting to a period of two years. The revision of the directive proved highly contentious and brought about a striking conflict line between Western European countries and the Central and Eastern European countries, which saw the initiative as an unfair attempt to restrain the posting of workers. In the summer, the national parliaments of these countries triggered the yellow card procedure for the violation of subsidiarity on the grounds that, through the notion of 'remuneration', the Commission was infringing on national competences, notably wage policy and regulation of temporary work.

The issue brought about clear dividing lines within the Council, as well as in the European Parliament. Due to the divisive nature of the piece, two co-rapporteurs from the S&D and the EPP groups were appointed and agreement on a draft report has proved difficult and eventually occurred in December. The shadow of the debate about social dumping vs economic freedom and competitiveness has continued to have an impact on all political debates, not least the campaign of the French presidential election. As a matter of fact, under the newly elected President Macron, France has put forward a new proposal for revising the directive (aimed especially at better fighting fraud through 'letter box' companies), which has delayed the decision-making process and made an agreement among the Member States more complicated. An agreement has nevertheless been found in the Council in October 2017.

2.2 The poor implementation of the Youth Guarantee

In December 2016, the European Commission presented a report on the implementation of the Youth Guarantee launched in 2013. The aim of the Youth Guarantee is to ensure that all youth under 25 receive a quality job, internship or education offer within four months of finishing school or becoming unemployed. Besides the funding project of the European Social Funds, the Youth Employment Initiative was set up to with EUR 6.4 billion, for a total of EUR 12.7 billion for the period 2014-2020. A substantial part of the money was used to advance funds and help the Member States to speed up the implementation of the scheme. Three years on, the Commission pointed to some encouraging results, notably a drop of 3 points in youth unemployment, and reported that the Guarantee benefited some 14 million young Europeans. However, 15 EU countries still have youth unemployment rates above 15% with peaks around 45% for Spain and Greece (OECD data). Moreover, 12% of young Europeans are still 'not in employment, education or training'. The Youth Guarantee has been criticized by MEPs and the ETUC for failing to tackle the full scale of the problem and often leading young people into precarious jobs. A main problem detected is that young people exiting a youth guarantee scheme take up a job offer, but often on a temporary basis, thus leaving them returning to a youth guarantee scheme afterwards. Both the European Parliament (EP) and the International Labour Organisation reckoned that approximately EUR 20

billion would be needed to address youth unemployment (Morgan 2016). Furthermore, the Commission and the EP assessed that the actual implementation was still at an early stage as of 2016 and that only one in five Member States had achieved full implementation of the various measures planned in the framework of the Youth Guarantee (European Parliament 2017).

2.3 A stabilisation mechanism in the Euro area?

The policy debates about the reform of EMU has prompted reflections on the need for automatic macro-economic stabilizers within the Euro area. More specifically, the idea of a European unemployment benefits scheme has been much discussed by researchers and policy makers and the debate climaxed at a high-level conference taking place in Brussels in July 2016 under the auspices of Centre for European Policy Studies. A number of personalities such as Marianne Thyssen, Pierre Moscovici, Pier Carlo Padoan, Sebastian Dullien and Paul De Grauwe promoted the idea of setting up a fund, discussing the various designs put forward in a number of studies (e.g. Vandenbrouche *et al.* 2016). The most realistic options do not involve direct transfers from the EU to unemployed individuals. Rather, the prevailing design promoted is a sort of insurance fund which would flow into national schemes. The funds could be activated by those countries which are affected the most by external shocks, thus tackling the problem of collective coordination and reduced national budgets in times of crisis. Although the idea has been much discussed and on the public debate agenda since 2013 at least, the time does not seem ripe for the European Commission to make a such a bold proposal as it does not seem that it would enjoy the support of a strong enough majority of Member States. Decision makers might wonder about the acceptance among voters of further involvement of the EU in social policy matters. Public opinion is divided, with a push for more EU action to tackle unemployment countered by great resistance to deeper integration. Especially among the richer, creditor countries there are concerns that such a European unemployment insurance funds would act as a *de facto* mechanism for organizing permanent financial transfers towards the more vulnerable EU members with high unemployment figures. There is a belief that unemployment issues should instead be solved through the increase in GDP and the deregulation of labour markets.

All in all, little progress has been made to keep up Jean-Claude Juncker's promise that a 'social triple A' was the objective for the EU. This being said, in the aftermath of the referendum on Brexit (see Clegg in this volume), the Commission has been keen to show that the EU can move forward, especially with its social agenda. A main initiative in this regard is the European Pillar of Social Rights (see Sabato and Vanhercke in this volume). Similar to the European Semester, it should foster convergence through a mix of regulation and open coordination in an extremely wide range of policies where the EU actually has few competences. There is so far wide scepticism among political and social actors as to which results – if any – can be achieved through this type of fuzzy process. Furthermore, it is not clear how the Pillar can foster convergence in the Euro area in particular while dealing with policies which apply *de facto* to the EU-27.

More generally, it is striking to notice that there are currently no concrete initiatives on the table to achieve the objectives set in the Five Presidents Report for deepening the Monetary Union. It remains to be seen whether a new French-German political dynamic can bring the Europeans forward.

3. Hybrid governance, power and democracy

3.1 The politics of the European Semester: elusive ownership and asymmetric power relations

Since its inception in 2011, the European Semester has undergone a number of significant changes in the way it is operated. The objective of these changes has been mainly to improve the throughput legitimacy of the Semester, that is the efficacy, accountability, transparency, inclusiveness and openness of the procedures so as to generate policy recommendations that are seen as more legitimate in the eyes of the Member States. The 2016 cycle has been the first one operated along the lines defined by the Commission to 'revamp the European Semester' in October 2015.

A main change in terms of governance aimed to allow for more input from the national administrations into the process. This occurred through a modification of the calendar and the timing of the various reporting sequences. In the revamped version of the Semester, there is a period of 2-3 months for the Commission and Member States governments to discuss the CSRs which are going to emerge from the Commission's analysis. Exchanges are fed by a series of informal 'fact-finding missions' in the national capitals and more formal 'bilateral meetings' in Brussels bringing together national officials and services of the Commission (DGs ECFIN, EMPL and the General Secretariat) during December and February. Thus, the multiple consultations between the presentation of the country report and the adoption of the CSRs serves to allow for bottom-up input and to make sure that no government is taken by surprise by CSRs which could be politically sensitive.

A second series of changes seeks to enhance the 'ownership' of the reforms by bringing in a range of new actors, including national parliaments, social partners, NGOs, local governments, and think tanks. By stimulating 'ownership', the Commission pursues a twofold objective. First, enhancing a downstream communication about the Semester itself and the surveillance of national reforms by the Commission through the Semester; second, consulting stakeholders in order to be aware of their differing views and to benefit from their expertise on specific policy issues. A key means to reach out to stakeholders in the Member States has been the appointment of European Semester officers, Commission officials posted in the Commission's representation office in the national capitals. They act as the interface between the Commission and the stakeholders by maintaining formal and informal contacts with the relevant actors on the ground, and organizing visits from the Commission officials ranging from fact-finding missions to Commissioners' visits.

While the European Semester has become more efficient, it has arguably consolidated as a bureaucratic process geared towards expertise, with the paradoxical intention to be more involved and, at the same time, to stay away from national politics in order to avoid averse politicization. The involvement of political actors such as unions or national parliaments has been increasing over the past two years but remains limited to information and dialogue without much influence in most Member States (Sabato *et al.* 2017, Vanheuverzwijn and Crespy 2016). Attempts from the Commission to make it a *politically* relevant process run into several types of obstacles: a) when national actors (such as unions) disagree with the fundamental spirit of the structural reform agenda; b) when national actors (such as national parliaments) are uninterested in engaging with a non-binding process; c) when national governments do not embrace CSRs due to electoral constraints and d) when stakeholders, governments and the public contest the legitimacy of the EU Commission to monitor or interfere in national reforms in certain policy areas, especially those at the juncture between economic and social policy.

The problem for the Commission is that, even as it attempts to enhance throughput legitimacy through greater transparency, accountability, and inclusiveness under the assumption that this will ensure better output policy effectiveness and performance, input legitimacy remains in question. Apart from occasional politicization related to deficit rules, the European Semester is barely visible beyond state bureaucracies. In a very diffuse manner, economic governance in the EU continues to appear hierarchical and top-down, with the Commission and creditor countries promoting only a ‘one size fits all’ (read: German) model of competitiveness with no alternative strategy for those countries where it does not seem to work. While the growth prospects have been slowly improving, this has not translated into a significant decrease in unemployment or more welfare in a number of countries. Greece still finds itself in dire straits, which raises questions about the legitimacy of the EU in terms of both efficacy and democracy.

3.2 New intergovernmentalism vs new supranationalism, plus new parliamentarism?

The changing arrangements in the realm of EU economic governance have triggered a debate among EU scholars as to who, from the Member States or the supranational institutions of the EU, has gained power or autonomy. The debates, focusing on new forms of intergovernmentalism or supranationalism, show that power cannot be regarded as a zero-sum game. The complex interactions among the various institutional actors reveal a constant fluctuation between the bureaucratic management of everyday policy making and fundamentally political dynamics.

Scholars who explain EU governance as characterized by the ‘new intergovernmentalism’ see the EU’s member-state leaders in the European Council as much more legislatively active than in the past. They find that the Member States have taken on an unprecedented leadership role that they exercise through consensus-seeking deliberation and the creation of *de novo* regulatory bodies and instruments outside the purview of the Commission, such as the European Central Bank (ECB) and the European Stability Mechanism (ESM), in efforts to maintain and/or regain control over EU integration

(Puetter 2014, Bickerton *et al.* 2015, Fabbrini 2015). Such an approach enables us to explain the changing positions in the Council, where despite German dominance, Chancellor Merkel compromised time and again, first to respond to the push for growth in 2012 by Italian Prime Minister Monti (supported by President Hollande), and then to the insistence on flexibility in 2014 by Italian Prime Minister Renzi (again supported by President Hollande). However, one may argue that even if there was a deliberative consensus among the Member States, it was largely in the shadow of Germany, as the 'reluctant hegemon' (Bulmer and Patterson 2013).

Furthermore, supranational actors also played key roles, as the 'new supranationalists' would argue (Dehousse 2015, Bauer and Bekker 2014). Importantly, the new supranationalists would not deny that supranational technical actors are no longer the drivers of integration, as in the pre-Maastricht era. Rather, they contend that, in an ironic twist, it is the technical actors themselves who developed and persuaded intergovernmental political leaders to pass the policy initiatives they then enforce. These new supranationalists thus focus on supranational agents' ideas and institutional entrepreneurship to make European integration work better, whether or not this serves their specific power and interests (Dehousse 2015, Bauer and Bekker 2014). The European Commission has gained significant surveillance powers in the European Semester by, for example, building its in-house expertise on the Member States' economies, and using its discretion in applying the rules (Schmidt 2016). The ECB's autonomy is apparent in the Eurozone crisis, as it progressively reinterpreted its mandate, going from a narrow view focused on inflation fighting inflation and insisting that it could not be a lender of last resort to doing almost everything that such a lender does. This started with 'non-standard' and then 'unorthodox' policies of buying member-state debt (despite the prohibition in the treaties) by doing it on the secondary markets, and going all the way through to quantitative easing in 2015 (Buiter and Rahbari 2012, Braun 2015). Furthermore, the ECB accompanied its actions by urging Member States to engage in austerity and structural reform. As a member of the Troika, the ECB was party to the harsh demands put on program countries under conditionality, including Ireland and Portugal as well as Greece in the first, second, and third bailouts. For non-program countries under pressure from the markets, moreover, the potential demands were similar. Hence, some may argue that the ECB has moved 'from a monetary to a political institution' (Theodoropoulou 2015: 46).

Although the EP continues to have little coercive power in comparison to intergovernmental or supranational actors, it has wielded increasing institutional power, if only informally, in particular by becoming the 'go-to' body for legitimacy. Even in the case of Eurozone governance, a policy area in which the EP has been singularly devoid of competence (Fasone 2014, Crum 2015), it nevertheless had a role to play. That role came about in part as a result of the Lisbon Treaty, which gave the EP some powers of oversight as well as strengthened its powers to hold the executive accountable. Such accountability established the EP's right to be informed or occasionally consulted by the Commission on matters of multilateral economic surveillance; and it ensured the EP's ability to invite the Commission, national ministers, and the Presidents of the Council, the Eurogroup, and the European Council to an Economic Dialogue or Exchange of Views (Fasone 2014: 183, Héritier *et al.* 2015: 80). Moreover, the EP was also called upon

to legislate as part of the Community Method first with the ‘Six Pack’ and the ‘Two Pack,’ and then in the cases of Banking Union and the Single Supervisory Mechanism (SSM). Thus, while its role remains limited, the EP is trying to profile itself as a democratic watchdog of the complicated and rapidly changing economic governance in the EU.

Conclusion and outlook

Since the first reforms from 2010, economic governance of the EU has been – and still is – very much in flux. Since the end of 2014 especially, the Juncker Commission has sought to address the criticism of the excessive focus on austerity by promoting investment and allowing for more flexibility in the enforcement of fiscal discipline. In turn, a greater emphasis has been put on structural reforms with a strong focus on labour market deregulation. At the same time, the promotion of social investment has remained weak and *de facto* constrained by the prevailing orthodox conception of competitiveness. As a result, and in spite of slow growth recovery in most EU Member States, the EU’s strategy has still been failing to address the persistent economic imbalances across the Member States, their painful social consequences and dangerous political implications.

Against this background, the feeling is widespread that the status quo is not sustainable and that a new model for managing interdependencies in the EU is necessary. There is a good chance that further integration for the EU-27 will mean more differentiation. Tomorrow’s EU is best conceived not as a hard-core Europe centered around the Eurozone, let alone a future ‘superstate’, but as a region-state made up of a soft core of overlapping clusters of Member States in the EU’s many policy communities (Schmidt 2015b). This will require distinguishing among different types of policies, though. Defence could be an area where only some Member States may want to invest more resources. In contrast, the management of the EU’s external borders and the migrants influx into the EU cannot possibly be left as the burden to be borne by Southern Member States only. For all Member States to feel part of this soft- core EU, whatever their level of involvement, they need to be full members of the EU institutions. This means that they should be able to exercise voice in all policy communities, but vote (in the Council and the EP) only in those areas in which they fully participate. Since all are members in the most significant policy community, the Single Market, this ensures that they will be voting a lot. But for the Eurozone or Schengen, for example, only active members should be able to vote.

The deeper integration of the Euro area should occur only by strengthening both its policy rationale and its democratic credentials. The current debates may well build on ill-conceived assumptions. The first misconception is that convergence of member-state economies is a *sine qua non* for a successful monetary union; the second is that such convergence requires deregulating national labour markets and rationalizing welfare states. As Waltraud Schelkle (2017) has argued, the Eurozone is best understood as a mutually beneficial risk-sharing insurance union in which the diversity of the Member States constitutes its strength. Thus, rather than seeking to reduce diversity, it should be accepted (even celebrated) as a reality.

Therefore, what the Eurozone needs, rather than centralized governance by restrictive rules and sanction-triggering numbers, is to coordinate macroeconomic governance while decentralizing microeconomic governance to the benefit of national capitals (Schmidt 2015b). For example, why not make macroeconomic governance by the ECB more flexible, say, by using the Maastricht criteria as general guidelines for variable yearly targets, depending upon the Eurozone's employment as well as inflation prospects? Rather than demanding that all Member States meet the same yearly targets (e.g., of deficit and debt), why not set differential country-specific targets (depending upon where the Member States are in their economic cycle, and whether they are overheating and therefore need to contract, or are contracting and need to expand)? This would put responsibility for the country's economics back in national governments' hands. And this in turn could help counter the populist drift in many countries, as political parties of the mainstream right and left could begin again to differentiate their policies from one another, with proposals for different pathways to economic health and the public good. Furthermore, there is an ongoing debate on how elected parliamentarians could be better involved through a 'Parliament of the Euro area' made of either national MPs – as suggested by Piketty and colleagues in their proposal for a 'T-Dem' (Hennette *et al.* 2017) – or of MEPs, as suggested by Emmanuel Macron and Wolfgang Schäuble (Reuters 2017).

No institutional reform will work, however, if Member States continue to have to contend with excessive debt loads that weigh on their economies (e.g., Greece and Italy), if they are left without significant investment funds provided by banks or the state (e.g., Portugal, Spain, Italy, and even France), as well as if some countries continue to have massive surpluses while failing to invest sufficiently (i.e., Germany and other smaller Northern European countries). Thus, some extra form of solidarity is necessary, beyond the European Stability Mechanism, such as Eurobonds, Europe-wide unemployment insurance, EU investment resources that dwarf the Juncker Plan, or other mechanisms. Inevitably, this raises the question of stepping up the own resources of the EU and its budget.

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Chapter 6

The relaunch of European social dialogue: what has been achieved up to now?

Christophe Degryse

Introduction¹

In a recent European Social Observatory *Opinion paper*, we analysed the factors which, in recent years, have contributed to a slowing down, even to a halt in cross-industry European social dialogue (Pochet and Degryse 2016). These factors are linked, in particular, to a distancing of European employers, increasingly thinking globally rather than in terms of Europe², and declining support for social dialogue from the European Commission – particularly during the ten years (2004-2014) of the Barroso Commission – which has weakened trade union relationships with employers. Other more cyclical, but crucial, factors include the post-2008 economic, financial and sovereign debt crisis, as well as the growing influence of social deregulation policies promoted by a majority of Member States within the Council, and by the then Commission, in an attempt to overcome this multiple crisis.

All these factors have helped undermine social concertation at European level, and indeed in several Member States, particularly those hardest hit by the crisis. Since 2015, moreover, there seems to be a general atmosphere of European dis-integration, with Brexit, the asylum crisis, the questioning of Schengen, deteriorating international relations, and the rise of populist parties in Germany, Austria, Finland, France, Hungary, the Netherlands, Poland and Sweden.

The beginning of 2017 did, it is true, bring better news, with the defeat of certain radical parties predicted as possible victors in legislative and presidential elections (the Austrian presidential elections of December 2016, the Dutch legislative elections in March 2017, and the French presidential elections in May of the same year). But Europe and the world remain traumatised by Brexit and the election of Donald Trump.

In 2016, we wondered whether employer organisations had correctly identified the link between the rise of Euroscepticism, nationalism and Europhobia, and the deterioration

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1. The author would like to thank Denis Bouget, Sebastiano Sabato, Bart Vanhercke and Philippe Pochet for their helpful comments. The final version of this chapter is the sole responsibility of the author.
 2. As noted by BusinessEurope (2017): ‘The reality of industry and the way it operates has been radically transformed in the past few decades, with globalisation and digitisation as main drivers [...] Businesses from around the globe cooperate today in real-time, across countries and in international networks, platforms and clusters. Processes that used to be developed together are now split into different parts of the world, underlining the importance of openness to trade as a key driver of the world economy’.

of living and working conditions, with whole swathes of the population reduced to poverty (Pochet and Degryse 2016). Our feelings were echoed, a year later, by Financial Times journalist, Martin Wolf, who, referring to the ‘rise of populism in wealthy economies’, highlighted that: ‘among the most significant developments is flat or falling incomes since the financial crisis. Up to two-thirds of the population of many high-income countries seem to have suffered flat or falling real incomes between 2005 and 2014. It is little wonder so many voters are grumpy’ (Wolf 2017).

In the following sections, we begin by examining the main trends in cross-industry European social dialogue (Section 1). We see, in particular, how the new start called for by the European institutions and the European Trade Union Confederation (ETUC) has not yet delivered tangible results. We then look in more detail at European sectoral social dialogue (SSD). The two ‘levels’ of bipartite European social dialogue – cross-industry and sectoral – have developed somewhat differently for several years. After examining recent general trends in SSD (Section 2), we go on to focus on a particular issue (Section 3) currently becoming more topical especially at company, branch and sector level: digitalisation of the economy and its likely consequences on employment and labour markets. We conclude by highlighting the striking contrast between the current situation at sectoral and cross-industry level.

1. Cross-industry social dialogue: a relaunch in declarations

In 2016, hopes were raised when the President of the European Commission, Jean-Claude Juncker, expressed a wish to relaunch social dialogue and to adopt a pillar of fundamental social rights. There was also hope that the European project as a whole would receive new momentum as a ‘Europe that protects’, in the words of the new French President, Emmanuel Macron – seemingly promising a more favourable context for European social dialogue.

In 2016, the cross-industry social partners – BusinessEurope, CEEP, UEAPME and the ETUC³ – adopted a series of declarations on social dialogue (27 January 2016), the refugee crisis, digitalisation of the economy and industrial policy (16 March 2016), apprenticeships (30 May 2016), and of course the joint statement with the Commission and Council on a new start for social dialogue (27 June).

In 2016, in addition to these declarations, two substantial negotiation topics were addressed by the social partners. These two sets of negotiations had very different outcomes: the first failed in 2016, and the second resulted in agreement at the very beginning of 2017.

a) The first topic for negotiation emerged from a consultation launched by the European Commission, with a view to strengthening the existing regulatory framework of the

3. BusinessEurope is the association of European private-sector employers (formerly UNICE), CEEP is the European Centre of Employers and Enterprises providing Public Services, UEAPME is the European Association of Craft, Small and Medium-sized Enterprises, and the ETUC is the European Trade Union Confederation.

work-life balance. The first phase of the social partner consultation was launched in November 2015, the second in July 2016. The Commission's aim was to better adjust working conditions to the situation of working parents, and of all those, largely women, having to care for young children, ill or disabled family members or ageing parents. This would mean reinforcing the provisions on maternity leave, paternity leave, parental leave, but also introducing so-called 'care leave', as well as possibilities for flexible working arrangements to help workers cope with caring needs within their family.

Enthusiastically welcoming this consultation, the ETUC replied with detailed proposals for amending existing legislation and for new negotiations with the employers on, in particular, care leave and paternity leave. However, at the end of the consultation period at the end of September 2016, it became clear that the trade unions were isolated on this point. The work-life balance issue, therefore, was stopped in its tracks by the refusal of BusinessEurope, CEEP and UEAPME to enter into substantive negotiations.

How should we interpret this ambivalent employer attitude, on the one hand agreeing to sign declarations on a new start for social dialogue, while on the other hand refusing to work on a draft agreement which would have had a strong, specific and positive impact on workers' lives? If we take the view – in tune with Jean Lapeyre (2017) – that European social dialogue was not designed to be just a forum for exchanging views and holding discussions, but, first and foremost, a place to negotiate improvements to living and working conditions, then we must see this as a real failure. A failure, indeed, which revives fears that the grand hopes of the Commission and the Council could be dashed by the attitude of the European employers.

One explanation can no doubt be found in a document published in 2017 by BusinessEurope. In it, the employer organisation describes its vision of a modern European industry. Aside from the usual comments on excessive administrative and tax burdens, it describes how it sees the future of labour markets: 'The more flexible labour markets are, the quicker companies are to hire. Europe's employment policies should converge towards the same goal of achieving open, mobile and dynamic labour markets, where companies are encouraged to create jobs and people are better off working, in increasingly productive work, whilst being adequately protected when unemployed' (BusinessEurope 2017).

This view of 'adequate' protection solely for periods out of employment is fairly distant from the flexicurity concept promoted by the EU (European Commission 2007). Indeed, this flexicurity was one factor behind the plans to improve the work-life balance, benefiting businesses *but also* workers.

Moreover, the employers' view of 'open, mobile and dynamic' employment, which *necessarily* encourages companies to create new jobs, is vigorously rejected by workers' organisations, who see it as a sort of employers' myth. This myth is analysed in a book published recently by the European Trade Union Institute: 'reducing employment protection has brought neither labour market nor economic benefits. Moreover, post-crisis changes were accompanied by increases in precarious employment in those countries that were most enthusiastic in their deregulatory efforts. When new jobs

appeared, they were more likely than in the past to be atypical and of poor quality, as illustrated by the growth of part-time jobs, temporary contracts or solo self-employment' (Piasna and Myant 2017).

This issue, therefore, highlights the two traditionally opposing views of flexibility: flexibility seen as a way of deregulating employment and the various aspects of employment protection (called for by employers but criticised by trade union organisations), and, on the other hand, flexibility as a way of adapting working conditions to the personal and family situations of workers, especially working women (called for by trade union organisations but criticised by employers).

b) The second topic for European social dialogue referred to previously is active ageing and an intergenerational approach to human resources within companies. It took nine months of negotiations to reach, on 8 March 2017, an autonomous agreement on this issue. These negotiations were part of the social partners' working programme for 2015-2017. This is an 'autonomous' agreement, i.e. an agreement by which the European social partners commit their national affiliates to promoting and implementing its provisions, according to their own traditions (this agreement is not therefore to be turned into a directive).

The overall objective is to improve working conditions for older workers, enabling them to remain on the labour market until the statutory retirement age. This is to be done by means of measures concerning workplace health and safety, skills and competencies management, work organisation (anticipating and adapting the allocation of specific tasks, for example), and intergenerational transition and solidarity, by, in particular, organising two-way transfers of skills. This second topic, therefore, is largely an issue of human resource management, work organisation and non-discrimination. It seems to have been easier for the social partners to agree on this than on the other topic referred to above, that of flexibility.

For the future, the key question will be to what extent the provisions set out in this agreement will actually be implemented at national level. In the recent past, one of the main sources of dissatisfaction voiced by the ETUC and its members was the abysmal quality of the implementation of 'autonomous' agreements not converted into directives. In some countries, these agreements were not implemented in any way. The final provisions of the current text on active ageing state that implementation will be examined in 2020, potentially resulting in joint actions taken by the European social partners vis-à-vis those countries where implementation is not satisfactory. Finally, after 5 years (as of 2022), each European social partner will be able to ask to evaluate and review the provisions of the agreement.

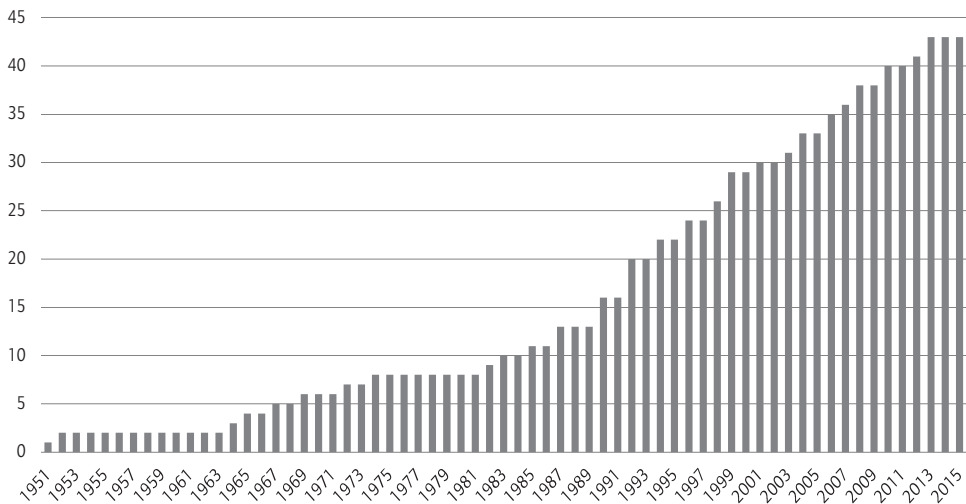
Overall, then, the results of the cross-industry European social dialogue in 2016 are mixed. Aside from declarations of good intentions, it is clearly still very difficult to obtain tangible, specific results which can be verified in situ (why, for example, are framework agreements no longer being converted into directives?). In 2016, the employers refused to countenance a view of flexible employment which would benefit workers with family or care responsibilities. The private-sector employers confirmed their view of maximum

flexibility, designed to benefit companies and, they say, to create jobs. As we have seen, this approach is questioned by studies from union-friendly bodies. These seemingly intractable differences in views did not, again in 2016, stand in the way of more fruitful negotiations on managing older workers in companies. But at a time when the European Union is promoting its planned European pillar of fundamental social rights, we have doubts as to the mindset of employers and their ability to work with the Commission, the Council and the other social partners to build a shared and ‘social’ vision of future employment and labour markets.

2. Sectoral social dialogue: its own dynamics

European sectoral social dialogue continues to develop gradually with, as already underlined in previous articles (Degryse and Pochet 2011; Degryse 2015), results varying between sectors⁴. The social partners engage in this dialogue in 43 ‘sectoral social dialogue committees’ (SSDCs). Much research has been done on analysing the differing dynamics of these committees (Dufresne *et al.* 2006). All in all, having gone through a growth phase until 2007 and then a slowdown linked to the economic and financial crisis, sectoral dialogue now seems to have reached cruising speed, in terms of both the number of SSDCs, which has now stabilised (Figure 1), and of their activity, measured by the number of joint texts adopted each year (Figure 2).

Figure 1 Number of European sectoral social dialogue committees

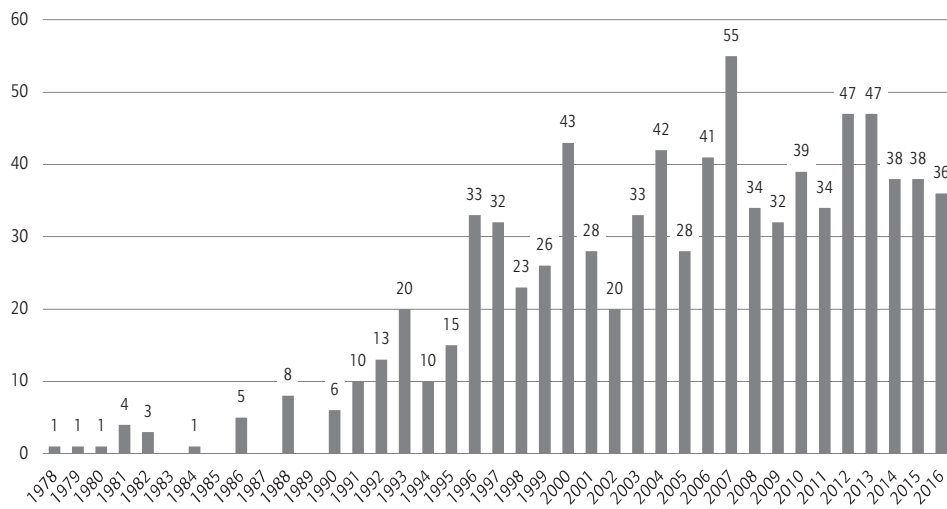


Source: ETUI database on European sectoral social dialogue.

4. The following statistics and graphs are taken from the European Trade Union Institute’s database on sectoral social dialogue. The author would like to thank Stefan Clauwaert and Philippe Pochet for their help in updating this database.

A 44th European sectoral social dialogue committee may be set up in the near future. Representatives of the social services sector in some EU countries are involved in a project funded by the European Commission to establish a structured European social dialogue in this sector⁵.

Figure 2 Evolution over time of the number of joint texts adopted in the context of European sectoral social dialogue



Source: ETUI database on European sectoral social dialogue.

Many reasons have been put forward to explain the uneven results of SSD. These include the differing levels of impact of European policies on the various sectors (Dufresne *et al.* 2006), the nature of the topics under discussion (how controversial?), but also the variety of national social concertation structures, the diverse strategies followed and the varying interests of the employers (Perin 2014).

Since 2010, we have seen no major change in the overall dynamics, and the nature of the process itself, moving between joint advocacy and reciprocal commitments (Degryse 2015), seems just as ambiguous. According to our analytical model, the joint advocacy aspect is essentially reflected in the adoption by the social partners of texts directed at the European institutions or Member State governments, hoping to adjust or influence certain aspects of European policies. These texts are ‘common positions’, which we could refer to as external texts (or texts for external addressees), as they are addressed not to the social partners themselves, but to the public authorities. The reciprocal commitments aspect, however, is reflected in texts in which the social partners set themselves rules, objectives or guidelines. These texts are tools⁶, declarations,

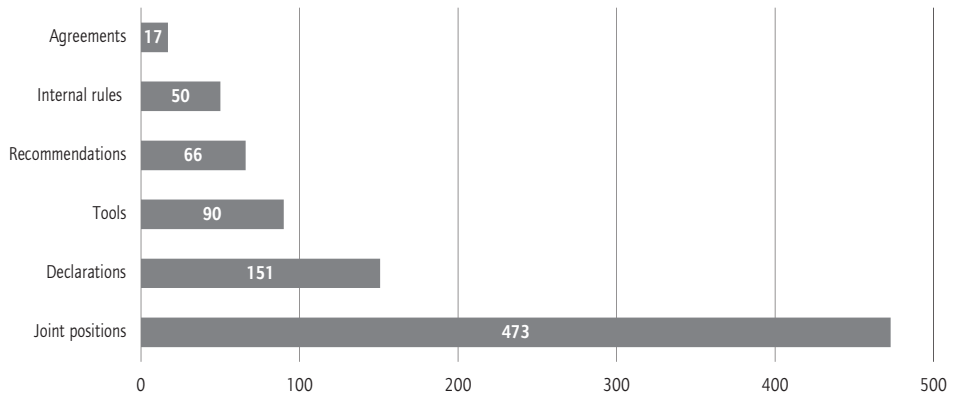
5. The so-called PESSIS project currently covers the period 2015-2017 (PESSIS III). See <https://www.socialserviceseurope.eu/pessis-iii>.

6. For example, ‘guides to good practice’ and ‘toolkits’ for assessing health and safety risks, etc.

recommendations and framework agreements, in the meaning of the Lisbon Treaty⁷, which we could call internal texts, as they are addressed to the (European or national) social partners themselves. This sub-category, therefore, includes texts legally binding the social partners, such as the framework agreements transformed into directives, and texts hardly committing them at all (declarations of intent or tools made available to national members).

This distinction between external and internal texts allows us to assess the function of social dialogue. As can be seen in Figure 3, joint advocacy (common positions) currently accounts for 56% of the total output of sectoral social dialogue.

Figure 3 Total number of joint texts adopted in the context of sectoral social dialogue, 1978-2016, by type of text (total: 847)

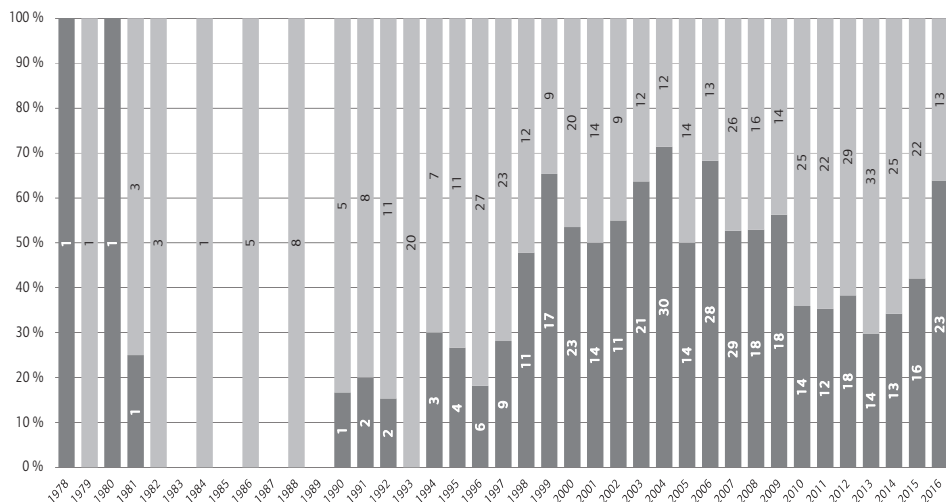


Source: ETUI database on European sectoral social dialogue.

This function, however, obviously varies over time. The model applied to the number of documents adopted each year shows how the function of sectoral social dialogue is evolving. We have already seen that until the beginning of 2000, there was a gradual trend towards more reciprocal commitments. Then, from 2010 to 2015 (Figure 4), i.e. immediately after the crisis, this reciprocal commitment aspect shrank dramatically, in percentage terms. While few documents have been adopted in 2016, a higher proportion of them are reciprocal commitments (64%). Time will tell whether this recent development is circumstantial, or whether it heralds a new era for sectoral social dialogue.

7. As well as rules of procedure, in which the social partners set out the 'rules of the game' for their sectoral social dialogue committee.

Figure 4 Percentage of external texts vs internal texts (advocacy vs reciprocal commitments (in dark grey: internal texts; in pale grey: external texts))



Source: ETUI database on European sectoral social dialogue.

In 2016⁸, the topics most frequently tackled in the SSDCs were questions related to health and safety at work (eight texts), particularly in the retail⁹, education¹⁰, personal services¹¹ and live performance¹² sectors. Then there were the questions linked to social dialogue as such (seven texts): its role, how it should be organised, its potential for change in the local and regional authority, postal, civil aviation, metal, service (banks, insurance, retail, personal services) and education sectors. Other topics concerned economic and/or sectoral issues (six texts): working conditions (5), training (5), sustainable development (3), non-discrimination (1), and corporate social responsibility (1).

In a previous article, we saw that the dynamics of sectoral social dialogue are partly determined by the political agenda of the European Union (Degryse 2015). For example, the situation of social dialogue in the electricity sector, previously linked to the energy liberalisation agenda, is now linked to the EU’s climate objectives; in the civil aviation sector it is partially linked to the European “single sky” project; while in the construction sector it reflects, to some extent, developments concerning the posting of workers, etc. With this in mind, we thought it would be interesting to examine how sectoral social dialogue deals with, or chooses not to deal with, a topic which is currently one of the EU’s political priorities: digitalisation of the economy (the so-called ‘4th Industrial Revolution’).

8. For an analysis of the period prior to 2016, see Degryse (2015).

9. Addressing physical and psychological risks at work.

10. Joint declaration on preventing and combating psychosocial hazards in the education sector.

11. Notably: European framework agreement on the protection of occupational health and safety in the hairdressing sector.

12. OiRA Tools for the Live Performance sector.

3. Digitalisation of the economy: a new challenge for European sectoral social dialogue

One particular subject seems to be emerging, and could become an important issue for future social dialogue: the expected social impact of digitalisation of the economy. As we will see in more detail below, this subject first arose in 2014 in the transport sector, with the sudden and ‘disruptive’ (or illegal, depending on your viewpoint) arrival of Uber in European cities. In 2015, it was the turn of the tourism sector with Airbnb, then the local and regional administration sector with the digitalisation of public services. In 2016, three new sectors carried out a joint analysis of this issue: the insurance sector, the chemicals industry, and the metal, engineering and technology sector. This suggests that the social impact of digitalisation of the production of goods and provision of services could gradually become one of the main concerns of the sectoral social partners.

3.1 Challenges ahead

What challenges lie ahead? The digital transformation, alongside climate change, will have a potentially enormous impact on the labour market, not only in terms of the destruction of jobs that become ‘obsolete’ and the creation of new ones, but also in the emergence of new skills, new forms of work organisation and new production processes. What some people call the Fourth Industrial Revolution – the internet of things, 3D printing, digital platforms, etc. – could lead to a fundamental shift in the way that we produce goods and provide services. Any job could be affected: from the manual worker, the service technician, the farmer, the taxi driver, the hotelier and the translator, to the executive, the human resources manager, the tax specialist, the journalist, the legal advisor and the personal assistant.

We can identify four types of impact on the labour markets: the changing number of jobs (between those destroyed and those created), the nature of these jobs, their displacement via globalised subcontracting, and new forms of managing and monitoring workers (Degryse 2016).

The changing number of jobs

Concerning the loss of jobs, certain studies predict that almost half of all current jobs in the United States (47%) risk being destroyed in the next 15-20 years (Frey and Osborne 2013). In Europe, this figure stands at more than 50% (Bowles 2014a and b), while in the United Kingdom more than a third of jobs are seriously threatened. Other studies, however, are less alarmist and predict that ‘only’ 9% of jobs are at high risk of disappearing (Arntz *et al.* 2016). There is little consensus between these statistics and, as Valenduc and Vendramin are right to point out, it is the organisation of work around the automation of tasks that is a central issue here. A robot replaces one (or several) task(s), but a job does not only consist of the accomplishment of one task (Valenduc *et al.* 2016). It is therefore dangerous to try to predict how many jobs robots will replace. This is why it would be helpful to have a more detailed picture of the impact of robotisation on the number of jobs in individual sectors. Here the social partners can play an important role.

The nature of newly created jobs

The development of digital labour raises many questions, mainly about the status of a worker on a digital platform ('freelancer' or '(in)dependent contractor?'), the nature of the employment relationship, the employer and her/his responsibilities, management and control over the worker, etc. We also need to consider the increase in multiple forms of atypical work, including freelance workers, 'nomads', occasional service providers, etc. (Eurofound 2015). Workers may be seeking transition jobs or just some extra income, but is there a risk of them becoming stuck in a cycle of precarious work? Furthermore, are regulations on health and safety, workplace accidents and working time respected? And what about professional insurance, social insurance and taxation? The social partners could consider these issues and find common ground, as they did in the past in the case of teleworking.

Displacement via globalised subcontracting

The digital economy knows no borders. More and more companies, whether SMEs or transnational corporations, use the internet to subcontract tasks that can be done by crowdworkers¹³ anywhere in the world, available 24/7. This subcontracting is made possible (and significantly easier) by digital platforms (Drahokoupil 2016). Is there a risk of 'normal' jobs being split up into small tasks that can be handed over to crowdworkers through these platforms? What kind of job is most endangered by this new form of digital Taylorism? But also, how can the crowdworkers organise themselves to avoid being drawn into a downward spiral of competition over prices? Considering what rules and regulations should be in place along the chain of production is a priority for the future.

New forms of managing and monitoring workers

Other new social risks are also emerging. For example, one of the challenges facing 'traditional' employees in offices or factories is their new relationship with corporate computer systems. The software for managing each step of the production process down to the smallest detail is being increasingly perfected. The risk is that workers can only play a subordinate role to these ultra-sophisticated IT systems, diminishing their autonomy and increasing their stress levels (Head 2014; Ford 2015). The new means of 'digital management' represent yet another challenge, and the debate over how to define a 'reasoned and reasonable' limit to employee monitoring in the digital economy is a good subject for the social dialogue.

Some general issues of digitalisation (like e-skills) have already been tackled by both BusinessEurope (2015) and the ETUC (2016), as well as in a document jointly adopted in 2016. In view of the profound digital and environmental transformations upon us, and all the uncertainties they entail with regards to the question of transition, we believe that the challenges identified above will come to define a renewed and ambitious social dialogue agenda.

13. According to Robertshaw (2015), crowd sourcing can be defined as 'the practice of obtaining needed services, ideas of content, by soliciting contributions from a large group of people, and especially from the online community rather than from traditional employees or suppliers (...). This technique is heavily exploited by Internet giants like Google, Facebook and Apple, who harvest data about individuals (...) and aggregate information about them to analyse patterns and trends in society that form the basis for valuable services'.

This will be particularly the case at sectoral level, since the social impact of digitalisation of the economy will most likely be closely related to the structure of the respective sectors, types of job, the way in which goods are produced or services provided, the qualification-level of the employees, etc. To our knowledge, no detailed empirical studies have been conducted on the effects of digitalisation in the various sectors organised at European level (transport, finance, tourism, agro-industry, insurance, manufacturing, etc.)

An analysis of the sectoral negotiations could of course help us understand the nature of these effects and how the social partners could anticipate them. However, at this point in time, only very few sectoral social partners have so far addressed the issue.

3.2 Case studies on digitalisation

As a first approach to the subject, we carried out a series of quick surveys of the multiannual working programmes of the sectoral social partners, providing an initial overview of the priority given to this issue. Of the twenty or so working programmes examined, the issue of digitalisation of the economy, or, more broadly, new workplace technologies, seems, with the exception of a very few sectors (insurance, road transport, hotel and catering, metal) to have been only touched upon (construction, telecommunications, local and regional authorities, retail, etc.), or totally ignored, even in sectors where these technologies could have, now or in the future, a considerable impact (postal, banking, education, rail, etc.).

This first impression, however, probably mainly reflects how new this issue is. Only since the beginning of the 2010s, when Uber arrived in some large European cities, have we been discussing the ‘Uberisation’ of the economy. Uber symbolically marks the moment when we first became aware of the social ramifications of this new economic model, the ‘platform economy’. This awareness soon spread to include the more general issues linked to digitalisation of the economy, as seen above.

By the end of 2016, six joint texts had been negotiated and adopted by the European sectoral social partners on this issue (see Table 1).

It is interesting to examine which specific issues are addressed in these texts. The first two sectors to look at the question were transport and hotel & catering, both of which quickly became concerned about the rapid rise of a new platform-based business model (Uber, Airbnb) with the potential to create new forms of competition deemed to be unfair, as the new model did not seem to be subject to the same legal, social and administrative requirements as applicable to traditional businesses in these sectors.

For this reason, the **transport** sector, in November 2014, adopted a joint text addressed to the European institutions. The aim of the social partners is to draw ‘the attention of international, European, national and local policy decision-makers to the fact that unfair competition on intra-city mobility markets, in particular from self-proclaimed “ride-sharing” for-reward transport platforms, illegally offering their “ride-sharing” services precisely on the taxi and hire cars with driver market, is ultimately detrimental

for the long-term mobility interests of citizens and visitors, including citizens with disabilities, whilst at the same time avoiding paying taxes and social security, thus destroying the fair and efficient functioning of entire segments of the public transport market, with potentially disastrous consequences on mobility, passenger-safety, legal employment, decent work and social conditions'. The social partners therefore call for 'fair' competition, which implies the application of the same European regulatory framework to the same activities.

Table 1 **Joint texts adopted in the context of European sectoral social dialogue on the digitalisation of the economy**

Sector (+ name of the social partner organisations)	Date	Title
Transport (European Transport Workers' Federation, ETF; International Road Transport Union, IRU)	19/11/2014	'Taxis – for a level playing field to support innovation and ensure quality of service to customers and competitiveness of the public transport chain "anytime, anywhere"'
Hotel and catering (European Federation of Food, Agriculture and Tourism Trade Unions, EFFAT; Hotels, restaurants, cafés in Europe, HOTREC)	4/12/2015	'A level playing field and fair competition in hotels & restaurants and tourism – Joint EFFAT-HOTREC statement on the sharing economy'
Public Services (European Federation of Public Service Unions, EPSU; Council of European Municipalities and Regions, CEMR)	11/12/2015	'EPSU-CEMR Joint Declaration on the opportunities and challenges of digitalisation in local and regional administration'
Insurance (UNI-Europa, Insurance Europe, Amice, Bipar)	12/10/2016	'Joint declaration on the social effects of digitalisation by the European social partners in the insurance sector'
Chemicals (IndustriAll; European Chemical Employers Group, ECEG)	22/11/2016	'Joint position of the European Sectoral Social Partners of the chemicals, pharmaceuticals, rubber and plastics industries on social and employment-related aspects of digitalisation'
Metal (Council of European Employers of the Metal, Engineering and Technology-based industries, CEEMET-IndustriAll)	8/12/2016	'Joint position on the impact of digitalization on the world of work in the metal, engineering and technology-based industries'

Source: Author's own elaboration.

The social partners in the **hotel, restaurant and tourism sector** also 'fear that the increased offer of accommodation services offered on a commercial basis through "sharing economy" platforms might result in a decrease of regular employment and in the creation of informal jobs, thus extending precarious and undeclared work'. They recall in passing that established enterprises in the hospitality sector are subject to certain obligations: legislation, tax obligations, registration and permits, safety, security and hygiene rules, rules on employees' rights and protection, consumer rights and neighbourhood rights.

In these two sectors, social dialogue is being used to promote, at European, national and regional level, a level playing field to ensure that the same legal framework is applied to all service providers, and that equal treatment is ensured by equivalent levels of customer protection, fair treatment of employees, and an environment of fair competition.

The **public services** sector tackles the issue a very different way. This sector is not concerned about fair competition, or new emerging players, but instead wishes to anticipate various aspects of digitalisation of public service provision in administrations, and the future consequences for employment. The ‘EPSU-CEMR Joint Declaration on the opportunities and challenges of digitalisation in local and regional administrations’ therefore addresses issues such as information and training of workers, quality of jobs, data protection, etc. In it, the social partners express their determination to work further on the following issues:

- to explore the changes to the work process caused by digitalisation;
- to assess the actual benefits enabled by digitalisation for workers and services delivery;
- to consider the information and training needs for various groups of workers;
- to identify how workers feel about the loss of personal/telephone contact with clients after the introduction of digital systems;
- to monitor the incidence of muscular-skeletal conditions in the workplace;
- to monitor the incidence of psycho-social conditions in the workplace;
- to implement the monitoring of sickness absence after the introduction of digital systems;
- to identify examples of good practice in the implementation of digitalisation and
- to facilitate the sharing of good practice.

As this is a ‘joint declaration’, the main purpose of the text is to mobilise stakeholders in the sector to establish a social dialogue structure to benefit workers and employers in local administrations. The aim is not first and foremost to influence the policies implemented by the European institutions, although the social partners do ask the European Commission to carry out an impact assessment on its proposals on e-services, online public procurement and online administration.

In the area of **insurance**, the joint declaration on the social effects of digitalisation was adopted on 12 October 2016. Its stated intention is to stimulate debate and social dialogue at national level, so that the challenges of digitalisation, which are multiple in the insurance sector (data analytics, social media, better customer-knowledge, etc.) can be met in a way beneficial for all. The text addresses the following principles:

- respect of national and European legislation: particularly information and consultation of workers, protection of personal data, teleworking, etc.;
- training: right to receive the training necessary to do one’s job, updating of knowledge, further training activities, development of e-learning;
- time and place of work: more flexible arrangements to accommodate changes in consumer expectations (internet ‘open’ 24/7), addressing the risk of deteriorating working conditions due to demands for permanent availability, health protection, work-life balance;
- jobs, safeguarding employment opportunities for workers in the sector, their employability and avoiding redundancies where possible;

- adapting to a digital environment: digital communication between colleagues, with management, reduction in personal contact, social skills, adaptability, etc.;
- employees' representatives in this new digital environment.

Interestingly, the insurance sector had already adopted, in 2015, a joint declaration on teleworking.

The **chemicals** industry has, in recent years, invested heavily in production automation and information technology. Businesses in the sector believe that digitalisation will result in increased productivity and quality, reduced costs, and greater operational efficiencies in production and supply chain management. These technological changes 'are inevitably affecting the working patterns and imply adaptation of the workforce. As a result of digitalisation, a certain amount of jobs will fall into obsolescence or face radical redesigning with the incorporation of new digital technologies', in the words of the joint declaration by the social partners. This text, adopted on 22 November 2016, describes the main work priorities for tackling this challenge:

- training of the workforce to enhance the economic and social performance of the sector;
- inclusion of the European sectoral social partners in the digital transformation process;
- promotion of competitiveness, job growth and sound working conditions in the industry.

After defining these rather general guiding principles, the social partners then set out the measures they have agreed to take. These mainly concern contributions to debates, comments and evaluations (together with the European Parliament and the European Commission), as well as, more specifically, the drawing up of an action plan to share good practice and learn from less successful experiences, with the help of case-based studies from affiliated associations and their members.

Starting from the same understanding, the **metal** sector notes that digitalisation of the economy will radically change work and the way in which it is carried out. In their joint declaration on 'the impact of digitalisation on the world of work in the metal, engineering and technology-based industries' adopted on 8 December 2016, IndustriAll and CEEMET launch a discussion on the best way to maximise the benefit for the industry in terms of growth and jobs. This declaration is presented as a starting point for the discussion. It addresses many issues, such as:

- probable changes in the volume of employment;
- new qualifications and skills;
- changes in the employment relationship and challenges in terms of the notion of working time, working place, collective bargaining;
- transformation of education and training systems: particularly vocational training linked to industry, life-long learning, anticipation and strategic planning of training needs;

- health and safety at work, new opportunities generated by the new technologies in terms of ergonomics, but also risks of blurred boundaries between private and working life, as workers increasingly use the same technologies in both of these (smartphones, laptops, tablets, etc.).

The social partners share, in this joint text, the same view of the social issues raised by digitalisation in this industrial sector, and undertake to exchange good practice and develop recommendations.

Generally speaking, then, only six sectors out of 43 had, by the end of 2016, directly addressed the issue of the social consequences of digitalisation of the economy (transport, hotel and tourism, regional public services, insurance, chemicals and metal). Of these six sectors, four are service sectors (transport, hotel and tourism, public services, insurance) and only two are industrial sectors (chemicals, metal). The topics addressed reflect a quasi-consensus on vocational training and reskilling of workers. There are a greater range of views on the other related issues: the social partners in the transport and hotel sectors are most concerned about competition, while social partners in the regional and local authorities prioritise questions of information and consultation. Working conditions and socially-responsible restructuring are a priority in the insurance sector, and health and safety are key for the metal and local authority sectors.

With regard to the nature of the texts adopted, the social partners are still relatively cautious. These are not framework or collective agreements, but, rather, declarations of intent, possibly constituting a first stage in the development of a shared view of the social consequences of digitalisation in the sectors concerned. Also, an increasing number of collective agreements are signed at company level, particularly on the ‘right to disconnect’: notably Volkswagen in Germany, Orange in France, and more recently Axa in Spain¹⁴. In France, this right was extended to all businesses by means of the 2016 Labour Law, which came into force on 1 January 2017.

Finally, as already mentioned, there are several major players missing. These have chosen not to address these burning issues, such as, for example, the banking, retail and postal sectors.

Conclusion

At cross-industry level, European social dialogue is not yet producing results living up to its stated new ambitions. Following the high-level conference organised by the Commission and entitled ‘A new start for social dialogue’ (5 March 2015), and after the formal commitment to strengthen social dialogue made in a joint statement by the Commission, the Council and the social partners (27 June 2016), the employers’ refusal to negotiate on the work-life balance looks out of place. If, following Jean Lapeyre (2017), we understand social dialogue as more than a forum for discussion, and instead

14. See, on this point, Rodríguez (2017).

as a real tool for making a tangible difference to the living and working conditions of European workers, then it has not yet produced any results.

By rejecting, in 2016, an understanding of ‘flexibility’ of employment which could benefit workers with family or caring responsibilities, private-sector employers confirmed their approach: maximum flexibility to benefit businesses alone. These opposing views did not, it is true, stand in the way of more fruitful negotiations, also in 2016, on managing older workers at work. However, when it comes to constructing a European pillar of social rights, the trade union movement still has doubts as to the mindset of the private-sector employers, and whether they will be able to work together with the Commission, the Council, and the other social partners to build a shared ‘social’ vision of future employment and labour markets.

At sectoral level, activity by the social partners seems to have reached cruising speed: certainly less dynamic than in the period 2004-2007, but with no radical change. The 43 or so sectors which currently have ‘sectoral social dialogue committees’ adopted 36 new joint texts in 2016. In particular, this year saw a relative strengthening of the reciprocal commitment aspect of social dialogue. Does this mean that the sectoral social partners see their role more today as one of regulating, managing and anticipating the social issues affecting their sectors? Time will tell.

From this perspective, we can say that discussions on the social impact of digitalisation would be enriched by further debate in these various sectoral bodies. What better place than these bipartite fora to conduct, sector by sector, joint analyses of the social ramifications of the introduction of new technologies, their impact on jobs, work, restructuring, skills, etc.? As we have seen, some sectors have now begun to tackle the issue. Others have not yet joined the discussion, although studies show that they will be strongly impacted by new technologies.

Our impression is also that many cross-cutting aspects of this ‘fourth industrial revolution’ could usefully be discussed at the cross-industry negotiating table, despite the difficulties already referred to. This is particularly the case for questions relating to worker data protection, regulation of the new ways of monitoring workers (even the self-employed) and new forms of management, principles on the use of online subcontracting, general principles on worker information, consultation and participation in the introduction of new technologies. Other important cross-industry issues are the increasingly blurred notion of working time and even workplaces, as well as potential greater work intensity due to the ever-increasing phenomenon of hyper-connection.

These are questions of relevance to all sectors, although to differing extents, and would therefore benefit, we feel, from a cross-industry approach. As we know, though, it takes two to tango. And at cross-industry level, although the European Commission and the Council of the EU orchestra have returned to their instruments and are ready to play, the European Trade Union Confederation is still waiting for its dancing partner.

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Chapter 7

Healthcare regulation: an obstacle to cross-border trade in services? On the muffled application of the EU Single Market Strategy and CETA

Rita Baeten

Introduction¹

European Union (EU) policies to create an internal market for services initially focused on the adoption of sectoral directives establishing EU-wide principles and minimum standards, for example in the fields of safety and quality, designed to replace national norms. This approach, however, was considered too slow for removing obstacles to the cross-border provision of services. Since the internal market of services remained to a large degree fragmented within the EU, these policies were supplemented with an approach based on mutual recognition of national norms and the removal of unjustified restrictions on trade in services. Such restrictions mainly relate to national requirements which must be met by service providers - in other words, regulation. This approach was to a great extent codified in the Services Directive, adopted in 2006 (European Parliament and Council of the European Union 2006).

The inclusion of health services in the European Commission proposal for the Services Directive in 2004 (European Commission 2004) was the subject of heated policy debates. The application of general rules on the free movement of services and freedom of establishment to health services, thus handling them like any other commercial service, was considered inappropriate by policymakers and stakeholders alike. They were afraid that the removal of unjustified restrictions on free movement could cripple the steering instruments used by health authorities, leading to Member States losing control over areas such as healthcare priority setting and capacity planning (Baeten 2005). Fear of legal uncertainty ultimately led to healthcare being excluded from the scope of the Services Directive.

Ten years after the adoption of the Services Directive, the EU again launched a number of policy initiatives aimed at removing barriers to trade in services. According to the Commission, the Services Directive is delivering only a fraction of its potential (European Commission 2015a). In this chapter we will discuss three policy developments in 2016 that apply to health services and in particular to health professions. In these initiatives, as in the EU policies to create an internal market and to promote trade more generally, regulation of healthcare providers is seen as an obstacle to the operation of the market,

1. This chapter draws on a study that has been carried out with the financial support of the Belgian National Institute for Health and Disability Insurance (NIHDI/INAMI/RIZIV). The author would like to thank the editors, Prof. Dr. Markus Krajewski, Fritz Thomas, Mathias Maucher and an anonymous reviewer for their constructive feedback. The responsibility for the content of the chapter lies entirely with the author.

rather than as a way of ensuring access to healthcare, quality of care or the financial viability of health systems.

First, as part of the roadmap set out in the Single Market Strategy, the European Commission launched its ‘Services Package’ with several proposals aiming to simplify procedures for service providers and to subject regulation in the service sectors to EU scrutiny (European Commission 2017a). It included a proposal for a Directive on a proportionality test before adoption of new regulation of professions (Proposal for a Proportionality Test) (European Commission 2017b). According to the European Commission, the proposal should ‘help Member States identify overly burdensome or outdated requirements on professionals operating domestically or across borders’ (European Commission 2017a). The bulk of the regulated professions falling under the scope of this proposal are health professions.

Second, the European Committee for Standardization (CEN), one of the three European standardisation organisations (ESOs), established a Healthcare Services Focus Group (HSFG) to make proposals on ‘an overall approach and methodology towards standardisation in the area of healthcare services’. This initiative is to be seen in the larger context of the European Commission’s recent policy to prioritise and incentivise the development of voluntary European service standards (European Commission 2016a). The development of such standards was already encouraged in the 2006 Services Directive to compensate for the lack of legal rules on service supply, due to the deregulatory construct of the Services Directive (Delimatsis 2016). According to the Commission, this approach had been unsuccessful since voluntary service standards account for only around 2% of all European standards. Since the fragmentation of standards acts as a barrier to the cross-border provision of services, the Commission wants to complement its 2016 initiatives facilitating the cross-border provision of services under the Single Market Strategy with the targeted development of voluntary European service standards (European Commission 2016a).

Although standard-setting is largely industry-driven, and the European Commission claims not to be involved in the initiative to set up a Healthcare Services Focus Group, our findings suggest its active behind-the-scenes involvement as the initiative’s agenda-setter.

Third, the 2016 initiatives for removing obstacles to trade in services were not limited to the accomplishment of the internal market, but also included important developments in external trade policies. The EU is negotiating a series of multilateral and bilateral trade agreements with a very broad focus on services, investment, government procurement, intellectual property rights and regulatory cooperation (Jarman and Koivusalo 2017). The first of this new generation of international trade agreements, the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) was signed on 30 October 2016. It is, as stated by the European Commission, ‘by far the most far-reaching agreement ever concluded by the EU in the area of services and investment’ (European Commission 2017b). Since this agreement is considered by many as a template for future trade deals, its importance cannot be underestimated. Despite the claims of the European Commission, many CETA provisions apply to the regulation of healthcare providers and in particular to rules relating to healthcare capacity planning.

For the purpose of this chapter, it is important to understand that these developments in EU internal and external trade policies, through removing (regulatory) obstacles to the free movement of services on the one hand and encouraging standardisation on the other hand, are interlinked. According to the European Commission, ‘a more complete internal market for services and more systematic regulatory cooperation with major third countries will facilitate international trade in services and the dismantling of behind-the-border barriers’. The Commission argues that the EU needs to ‘strengthen the mutual links between internal and external regulatory actions and to explore how to improve coordination between the two in areas like government regulation and international standards, with a particular focus on future legislation’ (European Commission 2010).

We will show how EU internal and external developments promoting cross-border trade create substantial legal uncertainty and put pressure on the capacity of health authorities to regulate healthcare providers, despite the fact that each of these frameworks includes, at least on first sight, certain legal clauses exempting health services from their scope or safeguards to ensure a specific approach for health services.

Nevertheless, many specific healthcare features require strong regulatory frameworks. These can be summarised as follows. *First*, the right to the highest attainable standard of health is commonly accepted as a fundamental human right.² This right includes timely access to comprehensive, quality healthcare services.³ Universal healthcare coverage, requiring large investments of collective resources, is a means to promote the right to health. To ensure such universal coverage, health systems in the EU provide a specified package of benefits to all members of a society. *Second*, from an economic perspective the healthcare sector is characterised by significant externalities and market failures, making it impossible to achieve an efficient market for healthcare (Hsiao and Heller 2007). Indeed, patients in general lack the necessary background knowledge to make informed decisions about the care they need and the quality and effectiveness of the services they receive. Since healthcare providers may have other interests than those of their patients, this information asymmetry makes the relationship very precarious. Healthcare providers have unique power to induce demand and set prices. Furthermore, since healthcare in the EU is mainly publicly financed, both patients and healthcare providers might seek to respectively receive and supply more healthcare (moral hazard), due to the fact that the cost is mainly borne by a third public party. For all these reasons, health systems are highly complex and the activities of healthcare providers require extensive regulation to bring them fully in line with the goals of public health and social policy and to ensure the most cost-effective use of limited public financial resources.

The remainder of this chapter is organised as follows. Section 1 discusses how EU internal market legislation applies to the regulation of healthcare providers. The next three sections each discuss one of the 2016 EU policy initiatives that include provisions having an impact on national regulation of health services. These are: the proposal for a proportionality test before adoption of new regulation of professions; proposals for

2. See e.g., Art 1 of the Constitution of the World Health Organisation.

3. See e.g. Art 35 of the Charter of the Fundamental rights of the European Union OJ C 326, 26 October 2012, 391-407.

the voluntary standardisation of health services; and the CETA agreement. For each of these policies we present the aspects of the initiative able to put pressure on regulation of health services, the positions of institutional actors and the reactions of stakeholders. In the last section, we discuss our findings.

The chapter will not deal with other important aspects of the impact of the EU internal and external trade rules on healthcare systems, such as rules on state aid, medical products and the impact of the legal frameworks on statutory health insurers.

1. Background: EU internal market law applied to the national regulation of healthcare providers

The variety of national regulations across the EU can create de facto barriers for healthcare providers coming from abroad, and can thus potentially obstruct the freedom of healthcare providers to establish themselves in another Member State or temporarily provide services there.

Given the unique role of health professionals in protecting human life and health, they have been singled out for special treatment in the Treaty on the Functioning of the European Union (TFEU) (European Union 2012 and Lonbay 2000), with Article 53 (2) specifying that ‘in the case of the medical and allied pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States’. The EU has since established a regulatory framework ensuring the mutual recognition of professional qualifications, including health professions, based on either a minimum harmonisation of training requirements or the coordination of access conditions and licensing rules – the so-called Professional Qualifications Directive (PQD) (European Parliament and Council of the European Union 2005).

It gradually became clear that the free movement principles also applied to healthcare institutions such as hospitals, medical laboratories or pharmacies. In this respect, the Court of Justice of the European Union (CJEU) plays a central role as it interprets EU law and ensures it is applied in the same way in all EU Member States. The CJEU has applied the fundamental freedoms enshrined in the TFEU directly to healthcare providers, ruling that the principles of free movement apply to both regulations governing access to a national (health) services market, and to regulations governing the exercise of the healthcare activity itself. Moreover, the Court has made it clear that not only rules discriminating against health providers from another Member State, but also measures that equally apply to domestic healthcare providers and providers from abroad were liable to be seen as restricting free movement (Gekiere *et al.* 2010). Consequently, almost any regulatory or institutional aspect of healthcare provision can be challenged as a potential obstacle to the free movement of services (Davies 2006). This is particularly important for healthcare, a field characterised by a plethora of regulations, such as rules on professional behaviour, patient access, quality, effectiveness and pricing, none of which specifically relate to cross-border situations (Gekiere *et al.* 2010).

The Court does however not intend to create a completely deregulated internal market, nor does it give healthcare providers unconditional access to a particular domestic healthcare market (Gekiere *et al.* 2010). Member States are allowed to maintain barriers to free movement provided that these are justified by public interest. In this respect, three conditions — known as the proportionality test — apply: it must be proven that the measure is necessary to protect the public interest objective, that it does not exceed what is necessary to attain this objective, and that the result cannot be achieved by a less restrictive measure.

Member States' ability to regulate healthcare providers thus became subject to a general proportionality requirement. In doing so, they face a relatively high burden of proof. The grounds for exempting the regulation of healthcare providers do not give Member States broad discretion to preserve national policies (Hervey and McHale 2015), and in fact it may be a challenge to demonstrate the wider effect of an individual measure on the sustainability of the entire system or on any other general interest objective it is pursuing (Gekiere *et al.* 2010).

The proportionality test was codified in the Services Directive. Article 15 obliges Member States to engage in a major screening exercise of their legislation on services. The requirements to be assessed include quantitative or territorial restrictions, requirements fixing a minimum number of employees, and fixed minimum and/or maximum tariffs. If a listed requirement is found to be discriminatory, or if its necessity and proportionality cannot be justified, Member States are required to simplify or abolish the authorisation or licensing procedures.

The application of this article in the original proposal of the Services Directive (European Commission 2004) to the regulation of healthcare providers was one of its most controversial aspects. A systematic and pre-emptive screening of all healthcare regulations was considered undesirable by many stakeholders, as it would have led to legal uncertainty: it could turn out to be difficult in some cases to sufficiently substantiate certain measures and could therefore disrupt the consistency of the health system as a whole (European Health Policy Forum 2005). This ultimately led to healthcare services being excluded from the scope of the adopted Services Directive.

After this exclusion, Member States called for more clarity on how much room for manoeuvre they had to justify regulations — in the general interest — even if they represented an obstacle to free movement. They were however unable to find a consensus on this sensitive topic, mainly because any legal proposal addressing this issue at EU level would inevitably encroach upon national powers regarding the organisation of health systems. Moreover, the European Commission was not in favour of providing a specific approach for the application of the internal market principles to healthcare services.

In the absence of clear political guidance, the Treaty provisions on free movement of services continued to be interpreted by the CJEU. In its more recent case law, the Court seems to acknowledge the specificity of healthcare, ruling that, when assessing whether restrictions on free movement are appropriate, Member States have, in the absence

of common or harmonised rules, the power to determine the level of protection they wish to afford to public health and the way in which that level is to be achieved. Since the level of protection may vary from one Member State to another, Member States must be allowed discretion⁴ and, consequently, the fact that one Member State imposes less strict rules than another Member State does not mean that the latter's rules are disproportionate.⁵ The Court furthermore noted that, where there is uncertainty as to the existence or extent of risks to human health, a Member State should be able to take protective measures without having to wait until the reality of those risks becomes fully apparent⁶, for instance without having to wait for the shortage of health professionals to materialise. The Court also took the view that, when there is uncertainty about the efficacy of alternative or less restrictive measures to protect public health, the inherent risks can be invoked to justify the maintenance of a measure⁷. The Court thus applies the precautionary principle in the field of healthcare (Baeten and Palm 2011). According to this principle, in the absence of scientific consensus that a policy is not harmful to the public, the burden of proof that it is not harmful falls on those initiating the policy. It could thus be argued that the Court, in this more recent case law, takes into account the political message sent out by the exclusion of healthcare from the 2006 Services Directive.

Given that the Court can only rule on the very specific national cases brought before it, it remains unclear how the principles established by the Court are to be applied to other specific provisions in other healthcare systems in other Member States. The Court is thus unable to provide the much-needed legal certainty.

This background on how the free movement principles apply to healthcare services is important for understanding the developments discussed below, and in particular the proposal for a proportionality test before adoption of new regulation of professions, which we will now consider.

2. A proportionality test before adoption of new regulation of (health) professions

2.1 The policy initiative

The first 2016 policy initiative impacting the regulatory capacity of health authorities focuses on regulation of health professions.⁸ In January 2017, the European Commission came up with a proposal for an EU Directive obliging Member States to conduct an ex-ante proportionality assessment of any new provisions / amendments to existing ones that were likely to restrict access to or the pursuit of regulated professions (European

4. Case C-169/07 Hartlauer, Case C-141/07 Commission v Germany, Joined Cases C-171/07 and C-172/07 Apothekerkammer des Saarlandes and Others, Case C-531/06 Commission v Italy.

5. Case C-141/07 Commission v Germany, Joined Cases C-570/07 and C-571/07 José Manuel Blanco Pérez and María del Pilar Chao Gómez.

6. Case C-531/06 Commission v Italy, Joined Cases C-570/07 and C-571/07 José Manuel Blanco Pérez and María del Pilar Chao Gómez, Case C-73/08 Bressol and Chaverot.

7. Case C-531/06 Commission v Italy.

8. For a more detailed analysis, see Baeten 2017.

Commission 2017b). The proposal requires Member States, when reviewing existing rules on regulated (health) professions or introducing new ones, to assess whether the provisions are necessary to attain a public interest objective, are suitable for securing the attainment of the objective pursued, and do not go beyond what is necessary to attain that objective (the proportionality principle). Before introducing a measure, other Member States and interested parties have to be informed and should be given the possibility to express their views. They may submit comments to the Commission or to the notifying Member State. As is the case with the Services Directive, if the Commission considers that the proportionality of a measure is inadequately justified, it can start an infringement procedure against the Member State concerned.

The bulk of the regulated professions falling under the scope of this proposal for a proportionality test are health professions. According to the European Commission, the health and social services sector accounts for 42 percent of the 6,000 professions regulated across the EU (European Commission 2015b). Regulation makes access to or the pursuit of a profession conditional upon the possession of specific professional qualifications, or protects the use of a specific title. It aims to reduce the information asymmetry between service providers and consumers, and to protect the public from unqualified practitioners.

The type of regulations referred to in the proposal for a proportionality test include: continuous professional development; language knowledge; reserving specific activities for professionals with a particular professional title; rules relating to the organisation of the profession, professional ethics and supervision; compulsory chamber membership, registration or authorisation schemes; requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding particular professional qualifications; and finally territorial restrictions, in particular where the profession is regulated in a different manner in different parts of a Member State. These kinds of measures are indeed applied in all European healthcare systems.

Many of the requirements to be assessed under the Commission proposal for a proportionality test are almost copy-pasted from Article 15 of the Services Directive. In its impact assessment, the Commission clarified that the proposal for a proportionality test was complementary to the Services Directive and in particular that, 'in terms of scope the Services Directive relates to only legal persons and does not cover the medical professions' (European Commission 2017d). This suggests that an important driver for the current proposal is the desire to extend the principles enshrined in Article 15 of the Services Directive to healthcare services.

The proposal stems from the Commission's assessments of a mutual evaluation exercise which Member States carried out in the course of 2015-2016, based on a 2013 revision of the Professional Qualifications Directive. This revision introduced a new Article 59, obliging Member States to list the professions they regulate and to explain why regulation is necessary. They had to enter all regulated professions into an EU database

together with all regulatory measures implemented for each profession notified.⁹ Member States were required to examine whether their regulatory requirements were compatible with the principles of non-discrimination, necessity and proportionality and had to justify any decisions taken as a result of this analysis to maintain or amend professional regulations¹⁰. Other Member States and stakeholders were invited to submit their observations on these assessments. To this end, the Commission organised a public consultation (27 May to 21 August 2016)¹¹ and a conference (on 18 May 2016)¹². Furthermore, 12 professions were chosen as examples of different regulatory approaches, including four health professions: physiotherapist, psychologist, dental hygienist and optician. The Commission published a sector report on each of these professions (European Commission 2015c, 2016b, 2016c and 2016d), drawing on information communicated by the Member States and discussions which took place during a meeting in 2015 on mutual evaluation for each sector. These sector reports call on Member States to assess in greater depth the necessity and proportionality of specific requirements, most of which were subsequently listed in the proposal for a proportionality test. According to the Commission's impact assessment on the proposal, Member States did not provide sufficient arguments in the mutual evaluation exercise as to the proportionality of their professional regulations, and produced only scarce evidence to suggest that regulatory decisions are currently being based on sound and objective analysis (European Commission 2017d).

A proportionality test in itself could be an instrument of good governance and could be used to improve the general interest objectives of regulating health professions, whilst countering corporatist private interests as well as protectionist national interests. However, the lack of clarity in the draft directive as to the extent to which a specific approach for health professionals could be justified leads to substantial legal uncertainty on regulation that can be crucial to preserve high-quality health services and universal access to healthcare.

2.2 Positions of institutional actors and stakeholders

The Council gave the Commission a mandate to provide an analytical framework for a comprehensive proportionality assessment of professional regulations (Council of the European Union 2016a) and reached, surprisingly quickly and without much debate, a 'general approach' on the proposal (Council of the European Union 2017), which will serve as a basis for negotiations with the Parliament. It should be noted that this proposal is being discussed in the Competitiveness Council and that health ministers are thus not involved. It is nevertheless striking that public authorities, i.e. those primarily responsible for ensuring that the general interest objectives in healthcare are

9. Regulated professions database. <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=homepage>

10. Mutual evaluation of regulated professions: National Action Plans. <http://ec.europa.eu/DocsRoom/documents/20581>

11. Consultation on the regulation of professions: Member States' National Action Plans and proportionality in regulation. http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8827

12. Reforming regulation of professions: results of mutual evaluation and way forward. http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8592&lang=en

preserved, did not voice any reservations over the inclusion of health professionals in this horizontal proposal for a directive.

In the European Parliament, there was initially little controversy on the proposal. The ENVI Committee (Environment, Public Health and Food Safety), the prime forum for investigating any EU initiative affecting public health, initially even decided not to issue an opinion on the proposal. However, positions have since shifted. The ENVI Committee revoked its initial decision and is now preparing an opinion. The draft opinions of both the ENVI and the JURI (Legal affairs) Committees are proposing the exclusion of health professions from the scope of the proposal. Also, several national parliaments have meanwhile adopted reasoned opinions stating that the draft does not comply with the principle of subsidiarity. In a resolution, the German Bundesrat calls for an exemption for health professions or, alternatively, a greater focus on patient protection. Whilst finalising this chapter, Andreas Schwab, the rapporteur on the proposal in the Committee responsible for the proposal, the IMCO Committee (Internal Market and Consumer Protection), has also proposed in his draft report to exclude health professions from the scope of the Directive¹³.

The most vigorous stakeholder reactions to the proposal so far have come from the EU-level organisations of some key healthcare professions. In a joint position statement, the Standing Committee of European Doctors (CPME), the Pharmaceutical Group of the European Union (PGEU) and the Council of European Dentists (CED) have called for the exclusion of the regulation of health professions from any EU-wide framework for a proportionality test. They express concerns about the lack of specificity in addressing the overall issue of health profession regulation, and are convinced that health professions should be considered distinct from other professions. They argue that policy decisions relating to the regulation of health professions must serve the objective of attaining the best possible quality of care for every patient, and that under no circumstances should quality of care, access to care or patient safety be put at risk by policies driven by other agendas, in particular economic concerns (CED *et al.* 2017). The European Public Services Union, EPSU, the recognised European social partner organisation for workers in the healthcare sector, also calls for the exclusion of the health professions from the scope of the proposal. EPSU fears that the Directive will have a ‘chilling’ effect on Member States’ regulation and that they will be less inclined to give full weight to social concerns and objectives of health, social, employment and professional training policies and measures¹⁴.

13. All documents available at: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0404\(OLP\)#tab-o](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0404(OLP)#tab-o)

14. EPSU intervention at the S&D Group Hearing on 1 June 2017.

3. Voluntary standards for health services

3.1 The policy initiative

The second EU-level initiative potentially impacting the capacity of health authorities to regulate healthcare providers aims to establish voluntary standards for healthcare services.

Standardisation aims to ensure interoperability and to reduce costs for the cross-border provision of services, notably by defining technical or quality specifications. These specifications are voluntary and are developed by industry and market players. Funding for standardisation comes from the stakeholders themselves. Although the use of standards is voluntary in nature, they may have legal effect when referenced in the context of legally binding agreements, such as contracts, accreditation processes or similar, when used in public procurement, or when referenced in legislation or in judicial proceedings.

European standardisation in the healthcare sector has traditionally been mostly limited to medical devices and e-health applications. European standards in these areas support the implementation of European legislation on safety and quality of medical devices and the interoperability and effectiveness of healthcare ICT applications and information.

By contrast, a number of initiatives were taken in 2016 with the aim of establishing standards of healthcare provision. Market-driven convergence through healthcare standardisation allows physicians to work in another country, hospitals to open branches overseas and patients to travel for surgery (Cortez 2009).

In June 2016 CEN established a Healthcare Services Focus Group (HSFG) tasked with making proposals for an overall approach and methodology moving towards standardisation in the area of healthcare services. This HSFG will prepare future activities in this field (CEN and CENELEC 2016). Furthermore, CEN established two new technical committees (TC) in 2016, one for the development of standards on 'Quality of care for older people'¹⁵ and the other on 'Minimum requirements of patient involvement in person-centred care'¹⁶.

According to a preliminary draft strategy of the HSFG, standardisation activities may cover primary healthcare, non-specialized and specialized healthcare, ambulatory and hospital care, emergency services, ambulance services, nursing homes, hospices, preventive healthcare, mental health services, dental services, physiotherapy, occupational health services, rehabilitation and pharmacies¹⁷. In sum, all types of healthcare services could become the subject of voluntary standardisation.

15. CEN/TC 449 - Quality of care for older people. https://standards.cen.eu/dyn/www/?p=204:7:0:::FSP_ORG_ID:2130749&cs=16605FFC2C3DD055E0211682B6C062AA4

16. CEN/TC 450 - Patient involvement in person-centred care. https://standards.cen.eu/dyn/www/?p=204:7:0:::FSP_ORG_ID:2151116&cs=1D44A19AFA1BBECA019313BDB1377FF73

17. CEN strategy on standardisation, 21 February 2017, unpublished document.

The draft document proposes, in an annex, an extremely far-reaching structure for healthcare service standards, going far beyond ‘technical’ specifications (such as the interoperability of ICT applications) and covering many core elements of health systems. It indeed includes requirements related to healthcare facilities and premises, patients’ rights, insurance cover, pricing, billing, measurement, evaluation of clinical outcomes. It furthermore deals with core requirements related to access to and the exercise of health professions. It proposes to define elements such as:

- The description of the healthcare service, including who provides it, where and how it is provided;
- The human competences, awareness, training, knowledge, skills and attitudes necessary for providing the healthcare service. In this context, reference is made to professional qualifications and competences required by physicians, nurses, midwives, radiologists, medical imaging practitioners, medical engineers, etc.;
- The service structure, including the professionals, departments, support services, communication and capacity planning. For capacity planning, reference is made to clinical laboratories, pharmacies, blood banks, radiology and other clinical services;
- Issues related to liability and insurance;
- Continuous learning and peer review.

This list includes many aspects on which Member States would have to screen their national rules under the proposal for a proportionality test. Taken together, the two developments – standardisation and the proportionality test – thus increase pressure on public authorities to remove nationally set norms on healthcare providers and to refer instead in their policies to standards set by market players and stakeholders at European level.

Box 1 **European Standardisation Organisations (ESOs)**

The three European Standardisation Organisations (ESOs) are the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI). They have been officially recognized by the European Union and by the European Free Trade Association (EFTA) as being responsible for developing and defining voluntary standards at European level. They bring together the National Standardisation Bodies of 33 European countries. If European standards are adopted, they replace corresponding national standards in all 28 Member States.

The equivalents at the international level are the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

The initiative aims to establish standards on elements of health systems that are heavily regulated at (sub) national level and that are core tasks of public policies. Such standards may be used by business to push towards lower-cost norms, possibly putting pressure on health authorities to lower their requirements, for instance when contracting out health services. It could lead to legal uncertainty when the standards differ from nationally-set legal norms. Cortez (2009) has shown that such convergence is dynamic and self-reinforcing.

3.2 Positions of institutional actors and stakeholders

The role of the European Commission in this initiative deserves particular attention. Most standardisation projects are initiated by national standard-setting institutes on behalf of interested parties. Standards can also be commissioned by the European Commission to be used in the implementation of EU law. EU companies that choose to use these harmonised European standards benefit from a ‘presumption of conformity’ to the requirements set out in EU legislation and are protected from liability.

The power of the European Commission to mandate the standardisation bodies to establish standards on healthcare is restricted, with the Regulation on European Standardisation (recital 11) stipulating that the Commission should ‘fully respect the exclusive competence of the Member States to define the fundamental principles of their health systems when mandating the standardisation bodies to draft European standards’ (European Parliament and Council of the European Union 2012). In spite of the fact that European Commissioner for Health Vytenis Andriukaitis denied that the Commission was involved in the current CEN initiatives on healthcare (Bulletin Quotidien Europe 2016), there are strong indications that the Commission acted as an agenda setter for the initiatives taken by the CEN. *First*, in its annual Union work programme (UWP) for 2015, the Commission included the development of European standards on healthcare services (European Commission 2014), suggesting that developing such standards is a Commission priority. *Second*, the CEN Strategic Advisory Group on Services (CEN/BT/WG 214-SAGS) and the Advisory Board for Healthcare Standards (ABHS)¹⁸ jointly set up an ad-hoc group on healthcare services in 2014 to develop the first draft of the strategy on healthcare services. The European Commission is a member of both these advisory groups. *Third*, the first preamble of the document on the decision of the CEN Technical Board (BT) to establish the HSFG, in June 2016, refers to the outcomes of a workshop, held on 20–21 October 2015, on healthcare services.¹⁹ This workshop was organised jointly by DG GROW (Internal Market, Industry, Entrepreneurship and SMEs), the European standardisation bodies and other actors. DG SANTE was indirectly also involved²⁰.

Since healthcare was excluded from the scope of the 2006 Services Directive, and the Commission has no legal competence to mandate the ESOs to standardise health services, it is thus plausible for the Commission to use other avenues to encourage healthcare standardisation as part of its internal market strategy.

As for the Council, the Polish delegation at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council meeting of June 2016 expressed its concern over the CEN’s work programme for 2016, arguing that the process initiated by CEN in the field of healthcare services might create a regulatory system with the potential to impact

18. Advisory Board for Healthcare Standards (ABHS). <https://www.cencenelec.eu/standards/Sectors/healthcare/Pages/ABHS.aspx>

19. BT 20/2016 of 16 June 2016, unpublished document.

20. European Commission, Putting Science into Standards: Evidence-based quality assurance – an example for breast cancer. <https://ec.europa.eu/jrc/en/event/conference/putting-science-standards-evidence-based-quality-assurance-example-breast-cancer>

healthcare professionals' ability to exercise their judgement under domestic regulatory systems. Poland called upon the Member States and the Commission to prevent further CEN actions in this area (Council of the European Union 2016b). According to Agence Europe, around ten Member States, including Germany and the United Kingdom, expressed similar concerns and called on the European Commission to support them in their approach. By way of response, Commissioner Vytenis Andriukaitis indicated that the Commission had no say in the matter (Bulletin Quotidien Europe 2016).

Various stakeholder groups also reacted to the developments.

Social health insurance organisations, organised in the European Social Insurance Platform (ESIP), and the International Association of Mutual Benefit Societies (AIM) expressed their concern over the development of market-driven standards in the field of healthcare and social services, arguing that introducing European standards in this domain could lead to legal uncertainty, since relevant guidelines covering the quality of these services had already been developed at national level. If European standards were to contradict these existing guidelines, they would reduce rather than improve the quality of services and lead to legal uncertainty (ESIP and AIM 2016a).

Also, the healthcare providers organised in the European Hospital and Healthcare Federation (HOPE), the Standing Committee of European Doctors (CPME), the Council of European Dentists (CED), the European Federation of Public Service Unions (EPSU) and the European Trade Union Confederation (ETUC) expressed in a joint open letter their concern over the increasing efforts at European level for standardising healthcare and social services. According to them, the voluntary and market-driven nature of European standardisation was not an appropriate mechanism for ensuring the realisation of public service principles and objectives. They argued that the 'pay to play' principles governing the process for developing European standards fell short of ensuring transparency, representativeness and accountability towards the general public. The letter stressed that professional autonomy was fundamental to ensuring both quality of treatment and patients' rights²¹.

4. Regulation of healthcare providers subject to CETA

4.1 The policy initiative

The third 2016 policy initiative we discuss in this chapter is the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA). Several chapters of this agreement are particularly relevant with regard to their impact on the capacity of health authorities to regulate healthcare providers. Whereas the first two initiatives proposing certain reforms were in their initial stages in 2016, CETA is nearly finalised.

21. Letter of 6 July 2016. <http://www.epsu.org/sites/default/files/article/files/HOPE%2BCPME%2BCED%2BEPSU%2BETUC-Letter-Standardisation-06.07.16.pdf>

On 30 October 2016, the EU (the European Council and European Commission) and Canada signed this agreement, and it was ratified by the European Parliament on 15 February 2017. However, since CETA was declared to be a mixed agreement (July 2016) (see Barbier in this volume), this means that it will not be fully implemented until the parliaments in all Member States have ratified it according to their respective domestic constitutional requirements.

The European Commission claims that ‘CETA fully protects public services’ and that ‘the system of investor protection enshrines the right of governments to regulate in the public interest’ (European Commission 2017c). However, as a detailed analysis by Thomas Fritz (2016) shows, the exclusion of health services from the agreement is not clear at all. CETA contains no general exemption of health services. Instead, the EU introduced specific reservations limiting the applicability of selected provisions on cross-border trade in services and investment. Furthermore, some of the exemptions only apply to EU Member States that expressly requested them. This targeted approach opens the door to various types of actions which could reduce the legal power of EU Member States to regulate healthcare providers. Although a comprehensive analysis of the potential impact of CETA on regulating healthcare providers is not possible within the scope of this chapter – the agreement covers 1,600 pages –, in the following sections we will highlight some of the main provisions potentially problematic for healthcare regulation.

Firstly, the CETA market access rules prohibit specific measures imposing limitations on service suppliers. Fritz (2016) concludes from his analysis that the prohibition of monopolies, exclusive rights granted to private operators and economic needs tests do not apply to health services. The agreement also preserves the right for authorities to adopt or maintain requirements to obtain a license, be a member of a professional organisation or speak a national language. Other requirements, such as rules limiting the number of service suppliers, the total number of service operations or the total quantity of service output, are prohibited. These are all crucial instruments, particularly for national planning policies on health services and professionals. Crucially, whereas under EU law regulating authorities have the possibility to justify such measures in the general interest by submitting them to a proportionality test, such possible justifications are much more limited under CETA. The latter only contains a narrow exception ground for the adoption or enforcement of measures necessary to protect human health.

Secondly, health services are exempted from some of CETA’s investment rules, with the exclusion of privately funded hospitals and ambulance services. The definition of ‘privately funded’ is, however, unclear, potentially leading to substantial legal uncertainty.

Thirdly, the investment chapter includes the controversial investor protection mechanism (Investment Court System – or ICS). This mechanism could be used by foreign investors against any service regulations regardless of the exemptions (‘reservations’) made in the agreement, if they consider that the government is breaching their ‘legitimate expectation’ of a stable business environment (Fritz 2016). Jarman and Koivusalo (2017) argue that, whereas foreign investors so far have often been deterred by the strength and complexity of healthcare regulation, giving them

extra-territorial means to challenge regulations could change this. According to many stakeholders and scholars critical of international trade agreements, such an ICS could constrain European governments when it comes to introducing public policy measures that threaten corporate bottom lines, and thus could have a so-called ‘chilling effect’ (Health and Trade 2016).

Fourthly, CETA includes a specific chapter providing a framework for mutual recognition of professional qualifications, to be negotiated between the EU and Canada, which fully covers health professions. The recognition of professional qualifications is a precondition for both temporary service supply and permanent establishment on the other side of the Atlantic.

Fifthly, various categories of professionals are allowed to stay temporarily (for up to four and a half years) in the EU (Fritz 2016). This includes employees of transnational corporations (e.g. commercial hospital chains). For some of these employee categories, including health professionals, the host countries cannot limit the number of posted senior personnel, and may not subject them to any specific requirements concerning evidence of their qualifications (Fritz 2016).

The agreement furthermore includes a number of mechanisms which make future regulation particularly difficult. *First*, market access provisions apply to all investments and services except to those specifically excluded by governments by means of reservations. This means that under this so called ‘negative list’ approach, future new health services are not excluded from the agreement. *Second*, it contains a so-called ‘ratchet clause’ implying that, if a country decides in the future to further open up its market in a specific sector, such an opening would be ‘locked in’ - i.e. there can be no step backwards. *Third*, it contains a ‘standstill clause’ implying that the countries commit to keep the market at least as open as it was at the time of the agreement. This means that if a Member State has decided (now or in the future) to liberalise certain aspects of its health system, it will not be able to reverse this decision if this liberalisation fails to meet the public interest goals of health systems. These mechanisms might limit future efforts by governments to extend regulation or renationalise services.

4.2 Positions of institutional actors and stakeholders

The CETA negotiation mandate, awarded by the Council to the Commission in 2009, asked for the agreement to provide, with regard to the liberalisation of trade in services, ‘the highest level of market access opportunities, without any a priori exclusions’. Nevertheless, the exclusions of ‘audiovisual and other cultural services’ and ‘services supplied in the exercise of governmental authority’ were explicitly mentioned. The mandate asked the Commission to ‘establish the necessary steps for the negotiation of agreements providing for the mutual recognition of requirements, qualifications, licenses and other regulations’ (Council of the European Union 2015a). Only in 2010 did the Council add a mandate on investment protection (Council of the European Union 2015b). The Council thus did not request a specific approach or exemption for health services.

In its resolution of 8 June 2011 on EU-Canada trade relations, the European Parliament considered that a state-to-state dispute settlement mechanism and the use of local judicial remedies were the most appropriate tools for addressing investment disputes. The Parliament considered that the 'public utilities exemption remains the most appropriate tool to guarantee universal access to public services to citizens'. There was no specific mention of an exemption for health services (European Parliament 2011). Nevertheless, more recently, in February 2016, the Parliament adopted a resolution on the negotiations for another trade deal, the Trade in Services Agreement (TiSA), in which it asked 'to exclude current and future services of general interest and services of general economic interest from the scope of application of the agreement, including health services' (European Parliament 2016). Despite these positions, the European Parliament voted on 15 February 2017 in favour of CETA.

Whilst the initiatives on the proportionality test and standardisation of health services have a clear focus on services, and in particular health services, the CETA agreement has a comprehensive scope, and thus touches on many policy areas. Within the wide range of stakeholders reacting to the agreement, organisations representing healthcare providers and professionals seem to have been less proactive.

On 22 September 2016, a broad group of organisations including Friends of the Earth Europe, the European Trade Union Confederation (ETUC), the European Consumer Organisation (BEUC), the European Public Services Union (EPSU), the European Anti-Poverty Network (EAPN), the Health and Environment Alliance and the CEE Bankwatch Network called on the EU's trade ministers to reject signing CETA, arguing that it 'threatens public policies through its investment dispute resolution mechanism, brings no benefits to Europe's citizens, and endangers the delivery of high quality public services'²², i.e. including health services.

Both the ETUC and EPSU are primarily concerned about the deregulation of standards protecting the public interest. In this context, they criticise the investor-state dispute settlement system, the use of a 'negative list' in the area of services, the fact that public services (including health services) are not categorically excluded from CETA and that those public services which are excluded remain subject to the so-called 'standstill' and 'ratchet' clauses, which will prove to be an obstacle to future governments (EPSU 2016; ETUC and CLC 2016). EPSU points explicitly to the risk that market access rules might interfere with planning procedures in the health and social care sector.

The European Public Health Alliance (EPHA), a grouping of not-for-profit organisations working on different aspects of public health, has called on members of parliaments to reject CETA and in particular the Investor Protection Provisions (Investment Court System-ICS) (EPHA 2016). It argues that CETA promotes the further liberalisation of healthcare, because the reservations in CETA only apply to publicly-funded healthcare, because it is the first agreement with a 'negative list' approach, and because the scope of the reservations has been limited.

22. Civil society groups call on European governments to reject the CETA agreement, 22 September 2016. <http://www.epsu.org/article/civil-society-groups-call-european-governments-reject-ceta-agreement>

The social health insurance organisations ESIP and AIM have called for a clarification of the exemption on health services, arguing that there are grey areas that could lead to legal uncertainty. They point out that publicly-financed professional health services are still bound by the chapters on cross-border trade in services, and have asked for an EU reservation that excludes all services delivered and paid for by statutory and complementary systems of social security, as well as at least an additional exemption for the area of social security in the investment protection chapter (AIM 2016; ESIP and AIM 2016b).

Discussion and conclusions

In this chapter, we have explored three 2016 EU-level developments aimed at promoting the cross-border mobility of services, all of which explicitly include or target healthcare providers. This is the case despite the fact that several legal frameworks underpinning these developments either explicitly exclude healthcare services from their scope or provide for a specific approach to healthcare provision.

Such provisions include:

- The specification in Article 53 (2) of the TFEU that the removal of restrictions on the cross-border exercise of health professions is conditional ‘upon the coordination of the conditions for their exercise in the various Member States’.
- Article 168 (7) of the TFEU stipulating that Union action shall respect the responsibilities of Member States for the definition of their health policy and for the organisation and delivery of health services and medical care.
- The exclusion of healthcare from the scope of the Services Directive.
- The Regulation on European Standardisation preventing the European Commission from mandating the standardisation bodies to elaborate standards related to health systems.
- The many exclusions of health services and public services from the application of aspects of the CETA agreement.

We have shown how the CJEU has played a driving role in subjecting regulation of healthcare providers to EU free movement principles. Nevertheless, the Court has acknowledged the specificity of healthcare by providing Member States with a relatively wide margin of discretion to determine the level of protection they wish to afford and the way in which that level is to be achieved, and by applying the precautionary principle when there is uncertainty about the existence of a risk to human health or the efficacy of alternative or less restrictive measures to protect public health.

Box 2 Requirements under scrutiny in one or more of the 2016 policy initiatives or in CJEU case law

- The reservation of certain kinds of health services for professionals with particular qualifications;
- training and continuous professional development requirements;
- rules relating to the organisation of health professions, professional ethics and supervision;
- compulsory chamber membership;
- registration or authorisation schemes;
- rules requiring health professionals to have sufficient language skills;
- requirements concerning insurance cover;
- rules limiting the number of service suppliers;
- rules on the territorial distribution of healthcare providers;
- rules on the total number of service operations or the total quantity of service;
- rules on the legal form of the health provider;
- requirements to have a specific professional qualification in order to manage a company providing specific health services;
- requirements fixing a minimum or maximum number of employees; managers or representatives holding particular professional qualifications;
- an obligation on the provider to supply other specific services jointly with his service;
- requirements restricting the exercise of a regulated profession jointly or in partnership;
- the ban on a professional having more than one place of operation.

Despite this, the proposal for a proportionality test in no way points to the specificity of health professions, nor does it apply the precautionary principle. What is more, whereas the EU internal market principles provide for the possibility of justifying restrictions on free movement in the general interest, as long as they are proportionate, in CETA such possibility is strictly limited (Jarman and Koivusalo 2017; Krajewski 2015). As a result, the prohibition under CETA on establishing rules limiting the number of healthcare providers, the number of health services or the quantity of service output fully applies.

Both the proposal for a proportionality test and CETA target future regulation. Numerous stakeholders and critical scholars voice the fear that such procedures could result in 'regulatory chill' (Jarman and Koivusalo 2017; De Ville and Siles-Brügge 2015), possibly dis-incentivising authorities from taking new measures in the general interest to protect public health or social objectives. The effects are therefore likely to be subtle, entrenching institutional machineries and processes that are likely to have a deregulatory impact in the longer term (De Ville and Siles-Brügge 2015).

The three developments in 2016 discussed in this chapter show how EU internal and external developments promoting cross-border trade in services are interrelated, and

how all three create substantial legal uncertainty and put pressure on the capacity of health authorities to regulate healthcare providers. As argued by Hervey and Mc Hale (2015), regulation of healthcare providers, rather than being seen as a way of protecting patients, or inherent to the proper functioning of national healthcare systems, is instead viewed as an obstacle to the operation of the market.

The European Commission, mandated by the (Trade and Competitiveness) Council, is the main agent for these policies. Health ministers are concerned about some of the developments but are barely involved in the debates. The European Parliament has voiced critical concerns on some of these policy initiatives, but seems to be in a rather weak bargaining position. Stakeholders actively involved in the provision or financing of publicly funded healthcare, such as health professionals, social insurers and trade unions, are the most critical. These are to a large extent the same categories of stakeholders reacting to the three 2016 policy initiatives, although for the proportionality test reactions have so far been mainly voiced by health professional organisations, a category less proactive with regard to CETA.

The first two initiatives, on the proportionality test and standardisation, are further examples of the asymmetry between the EU's weak powers in the field of social policies and its strong powers in economic issues. National welfare states are legally and economically constrained by European rules on economic integration, whereas efforts to adopt European social and health policies are politically impeded by the diversity of national welfare states (Scharpf 2002). By extension, the same asymmetry applies to EU external trade policies. Whereas in EU internal trade policies, the pressure for creating markets in the healthcare sector is somewhat tempered by democratic negotiation processes, in particular on secondary legislation, this safeguard is absent from EU external trade policies. In this way, EU external trade policies could be used by the proponents of greater cross-border market integration in healthcare to circumvent restrictions on the liberalisation of healthcare in the EU internal market.

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Chapter 8

Towards new work-life balance policies for those caring for dependent relatives?

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Introduction

Most long-term elderly care is still provided informally and on an unpaid basis, mostly by partners and children (OECD 2011, European Commission 2016a). As pointed out in the European Commission (2016a: 190-191) Joint Report on Health Care and Long-Term Care Systems and Fiscal Sustainability, family-provided long-term care is an ‘informal economic sector’ estimated to range between 50 and 90 % of the overall cost of formal long-term care (LTC) provision in EU countries (Triantafillou *et al.* 2010, European Commission 2016a)¹. As such, the informal sector plays an important role in the provision of LTC everywhere. What is more: in countries which under-invest in this area, informal care may be the only, or main, form of care available, particularly for low-income persons and families.

Family caregivers of frail relatives are very often women (70% to 90%, according to 2011 OECD estimates), and their ability to perform caring duties is influenced both by their employment status and by the LTC policies available in their country (Schmid *et al.* 2012, Da Roit *et al.* 2015). Many women who take on caring duties were outside the labour force prior to starting to care for a dependent family member. Indeed, this ‘non-working’ status of many (female) family carers has contributed to underestimating their needs and taking their availability for granted. Yet, an increasing number of family carers, whether female (as is still mostly the case) or male, are in employment. In this case, their need for support in balancing (often multiple) family obligations and in facing the emotional and sometimes also physical stress of dealing with the demands of a dependent adult is further complicated by the demands of their job. Their situation may be framed, at least partly, as a work-family balance problem.

There are important cross-country differences both in the incidence of family carers who are in work and in the degree to which policies directly or indirectly address their work-life balance, as well as in the degree to which policies address the – time, income, fatigue, stress – needs of family carers as such. But there are also convergent trends across the EU, due to demographic processes and to concerns regarding the sustainability of long-term care both for family carers and for public budgets.

1. The total value of unpaid family care ranges between 20% and 37% of EU GDP (Gianelli *et al.* 2010, OECD 2011: 44).

The main objective of long-term care policies as they have been developed in European Union (EU) Member States has been to provide adequate social rights and benefits specifically to dependent persons². Policymakers have paid far less attention to the role and well-being of family caregivers: only few countries have explicitly adopted specific provisions or services to support them. This can be explained by the fact that, historically, caring for dependent persons has been – and in many countries still is – a family obligation, fulfilled mostly by women, generally without any direct compensation. Long-term care has thus been an invisible social welfare scheme, i.e. an unpaid ‘informal care institution’. The social rights and needs of family carers at best have been a concern at the fringe of social protection systems, resulting in scarce or no benefits and services for carers. While there is a great deal of academic research on family carers (e.g. Brandt *et al.* 2009; Albertini 2016), their situation is relatively new on the agenda of policymakers. The latter are increasingly concerned about the financial sustainability of long-term care in an ageing society while at the same time wanting to support working-age family carers in order to keep them in the labour market. The combination of these two concerns has sometimes resulted in somewhat contradictory policy proposals. De-institutionalising care in favour of home care and reducing services (such as house cleaning, shopping) not directly linked to the bodily needs of the dependent person mean that the family and its informal network has to be mobilised to provide the lacking services. Conversely, putting such care within the framework of work-family reconciliation policies – until now reserved for workers with under-age children – redefines family carers as having both paid jobs and family responsibilities. Supporting the reconciliation of both thus becomes a public responsibility. Of course, these trends and their possible contradictions vary in intensity across countries, given the significant differences in existing national LTC policies as they have developed over the years.

The trend towards increasing support for caring for dependent family members is equally clear at European Union level. For a long time, work-life balance policies for carers have mostly addressed working mothers with young children and, more recently, encouraged fathers to share childcare, both through leaves (Council Directive on parental leave³) and through early childcare and education services (as targeted by the so-called Barcelona objectives⁴). From this perspective, the focus on family carers within long-term care policies in the EU’s 2016 documents and initiatives, including the proposed European pillar of social rights, represents a turning point.

The first section of the chapter shows the main national demographic and socio-economic drivers, simultaneously explaining the increasing pressure on national long-term care schemes and on the work-family-life balance of family carers. Section 2

2. In this chapter, ‘dependency’ of individuals refers to some functional impairment, inability to perform activities of daily living (ADLs) (e.g. eating by oneself, etc.) and instrumental activities of daily living (IADLs) (shopping, etc.) (European Commission 2015c: 142).
3. Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BusinessEurope, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.
4. In 2002, the Barcelona European Council set objectives in this area: ‘Member States should remove disincentives to female labour force participation, taking into account the demand for childcare facilities and in line with national patterns of provision, to provide childcare by 2010 to at least 90% of children between 3 years old and the mandatory school age and at least 33 % of children under 3 years of age’. Source: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/71025.pdf

describes the different types of national long-term care schemes, looking at how they affect the degree to which family caregiving is implicitly or explicitly expected and whether it is supported by public policies. Section 3 discusses the ambivalence and risks inherent to some recent developments. The focus of our analysis is on the opportunities and constraints these policies offer for achieving an acceptable work-life balance, thus on family carers as actual or potential labour market participants. Finally, we look at some promising initiatives, as well as the ambivalence of the recent EU policies in this field (Section 4).

In the conclusion, we argue that European and national policies seem divided between the aim of supporting the work-life balance of family carers – thus helping them to remain in the labour market – and that of recruiting them as main providers of care. In this ambivalent process, the nature of so-called ‘informal family care’ is both strengthened – as an expected, mostly gendered, family duty – and partly modified, insofar as the provision of family care is increasingly explicitly acknowledged and in some cases even compensated. Particularly where cash benefits for caring or carer’s allowances are provided to incentivise and support family carers, they can be welcomed as a positive acknowledgment of the value of a work that otherwise would go totally unrecognised. Yet, if this compensation is purely symbolic, with no social security coverage and in the absence of accessible quality services, these allowances may be just a token compensation for family carers forced to deal with multiple demands on their time and energy and sometimes even to give up their jobs, thus becoming financially vulnerable.

1. Tensions and challenges in the balance between long-term caring demands and available family care resources

Various factors have, for several decades, directly or indirectly impacted the situation of the cared-for on the one hand and of working carers and their work-life balance on the other hand. First, population ageing is increasing demand for long-term care in all European countries, while shrinking the potential pool of family carers. Second, changes in women’s labour force participation, together with a decreasing but persistent asymmetry in the gender division of labour and a blindness towards elderly care needs with regard to the way the labour market is organised and work-family conciliation policies, have further reduced the availability of family care. These two developments, demographic and in women’s labour force participation, are heightening pressure on family carers.

1.1 Intergenerational developments

Population ageing affects the pool of potentially dependent persons and that of potential carers in opposite ways, both at the population and family level. While the number of very old people (80+) and their percentage of the total population (5.6% in the EU28,

2016)⁵ is set to further increase in future years (European Commission 2015c: 17), the pool of potential male and female carers is likely to shrink. In the long run, there are likely to be fewer people able and willing to provide the required care for the dependent elderly within the family network (Murphy *et al.* 2006; Haberken and Szydlick 2010). In the EU, the number of women aged 50-64 years old – those most likely to have a frail or disabled relative in their family network (Eurofound 2015: 19) – per person 80+ decreased from 2.7 in 1990 to 1.9 in 2016 (Eurostat, *demo_pjangroup*). All European countries except Denmark have experienced a decline in this ratio, with a significant convergent trend reducing country differences over the last 25 years. Ireland, Sweden, Cyprus and the Netherlands have seen a rather slow decline in this ratio, while the decline has been dramatic in Romania (from 5.2 to 2.3) between 1990 and 2016. Many Southern and EU13⁶ countries – i.e. countries characterised by the most familialist and gendered schemes of caring – have also experienced a rapid decline in this ratio.

In addition to population ageing, other family changes have also contributed to reducing the potential number of family caregivers. Increasing numbers of unstable partner relationships not only lessen the possibility of support by a partner when old. They also reduce, particularly in the case of men, support by children (see Albertini and Saraceno 2008). The never-married/partnered and the childless are also particularly vulnerable to a dearth of family caring resources (e.g. Dykstra and Hagestad 2007, Albertini and Mencarini 2014).

1.2 Cross-country differences in women's labour market participation

The pool of potential carers is likely to shrink not only for demographic reasons but also because of the growing labour force participation of women, who are also increasing both their weekly working hours and the number of years in employment. According to Eurostat data, in 2016, the EU28 average rate of female employment (15-64 years old) was around 61%, with a higher participation rate in countries where the LTC schemes (see Section 2) are among the most defamilialised (at least 70% in Sweden, Denmark, Germany and the Netherlands). Greece, Italy, Malta, Romania and Spain have somewhat lower female employment rates (less than 55%), but even here they are increasing.

The percentage of female caregivers differs across countries. The existing literature on mid-life (40-60 years old) women with elderly parents in need of care shows that caring does not have a major impact on their employment when caring responsibilities only take up a few hours (e.g. Da Roit and Naldini 2010). According to OECD analyses (OECD 2011: 93; Jenson and Jacobzone, 2000), labour force participation only decreases when individuals provide high-intensity care, i.e. at least 20 hours per week. Generally, the effect is more in terms of reduced working hours than complete withdrawal from the labour market (Spiess and Schneider 2003). The most negative impact is found

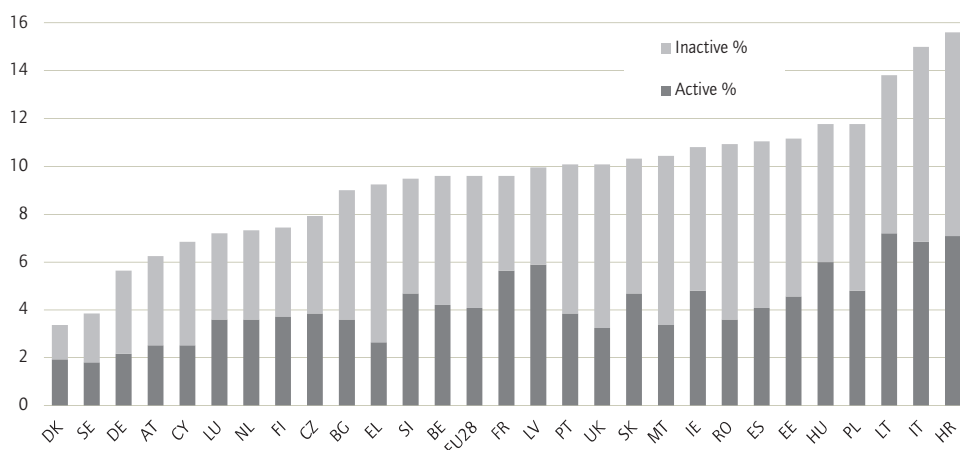
5. Eurostat, *tps 00010*.

6. EU13: the 13 countries which joined the EU in 2004 or later: Estonia, Lithuania, Latvia, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Cyprus, Malta, in 2004; Romania and Bulgaria in 2007; and Croatia in 2013.

among those with inadequate financial resources to cope with long-term care needs (Sarasa and Billingsley 2008), those for whom external support is not available or not affordable (Saraceno 2010; Sarasa 2008), those who care for a co-resident dependent relative (Heitmueller and Michaud 2006) and when care is particularly intensive (Crespo 2006). Intensive family care for a disabled member or a dependent old parent indeed decreases the likelihood of participating in the labour market in both Northern and Southern European countries. Yet, while in Northern European countries (where women's employment is higher) only a small percentage of women report providing intensive informal care to an elderly parent, in Southern Europe many more women do so, as reflected in the overall lower level of female labour market participation (Crespo 2006; Eurofound 2015). Overall, informal elderly care impacts women's employment opportunities and working hours in Southern European countries more negatively than in Northern European ones, with Central European countries situated in-between (Kotsadam 2011; Naldini *et al.* 2016).

In particular, high women's employment rates also in the older working-age cohorts, together with high-quality, widely available formal care, and non-rigidly defined gendered-care norms seem to be important macro-level factors explaining why being a caregiver has no significant effect on employment in Nordic welfare states.

Figure 1 Percentage of carers among the working-age population in the EU28 countries and their labour market status (%)



Source: Eurofound (2015: 17).

Figure 1 shows the varying incidence of working-age family carers (15-64) across the European Union and their distribution between those who are active and those who are outside the labour market (Eurofound 2015). In many EU countries, inactive family carers are more numerous than active ones. Among the working-age population, the highest shares of carers are found in Croatia (16%) and Italy (15%), followed by Lithuania (14%) and Poland (12%). The lowest shares are found in Continental Europe and the Nordic countries: 3% in Denmark, 4% in Sweden and around 6% in Germany and Austria. Denmark is also one of the countries with the highest share of family carers

in employment (54%), topped only by France and Latvia (59%). By contrast, in Greece, Malta and the United Kingdom, less than one-third of family carers (15-64) are working. Providing care to a family member in these countries only appears possible if the family carer quits his or her job or never entered the labour market. As more women go out to work and intend to continue doing so, tension between working and caring is likely to grow if policies do not take account of this change.

Whether (female) family carers work full-time or part-time obviously makes a difference with regard to their availability to provide family care. In the EU28, nearly 20% of employment was part-time⁷ in 2016, up 2 percentage points since 2007, mainly due to an increase in involuntary part-time work. However, there are huge differences between European countries. Besides the exceptionally high rate of part-timers in the Netherlands (nearly half of the employed, and more than 75% of employed women), countries with rates higher than the European average include Austria, Germany, Denmark, the United Kingdom, Belgium, Sweden and Ireland. In these countries, the availability of part-time work, together with the possibility of working flexible hours, is a key structural factor for caregivers in combining care and work. At the other end of the spectrum, part-time work accounts for less than 6% of salaried employment in Bulgaria, Hungary, Croatia, the Czech Republic and Slovakia, countries which (as we will see in Section 2), are among those with the most familialist LTC schemes. These scarce part-time opportunities reflect strong barriers related to the structure of the labour market and act as a considerable disincentive for family caregivers to remain in, or enter, the labour market.

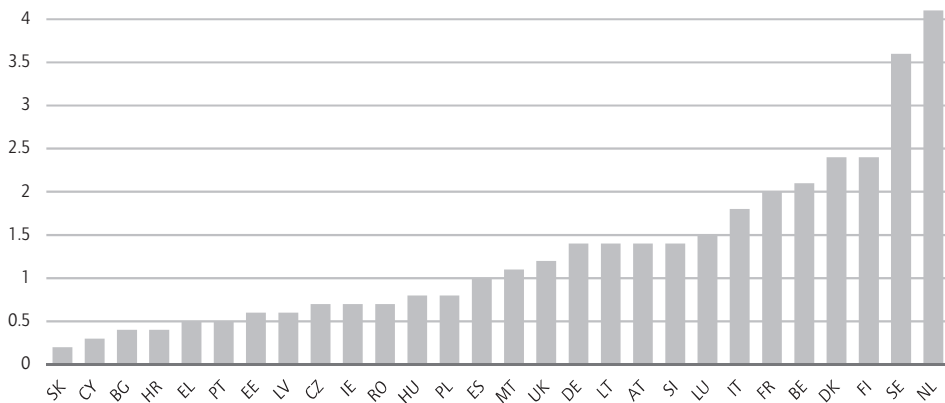
Of course, men could – theoretically and at least partly – compensate for this decline in potential family caregiving by taking up more caring responsibilities. This development, however, is constrained not only by cultural frameworks, but also by higher men's participation in the labour market. Long-term care policies that include work-family reconciliation policies are therefore needed not only to support a shrinking pool of female family carers, but also to encourage potential male family carers.

2. Diversity of long-term care policies and the work-life balance of family carers

Intensive caring responsibilities do not just occur when a family has young children. They may occur at many points throughout one's adult life, whenever a family member becomes frail or is severely disabled. The work-life balance of working carers, as well as the balance between multiple family obligations, is thus directly influenced by the type of public policies developed with regard to dependent or disabled persons. The very unequal development of national LTC policies of which differences in expenditure (Figure 2) are only a partial indicator.

7. Eurostat, Labour Force Survey, full-time and part-time employment by sex, age and educational attainment level [lfsa_epgaed].

Figure 2 Share of long-term care expenditure in GDP (%), in EU Member States, in 2013



Source: European Commission (2015c: 6).

2.1 National long-term care policies: varying institutional frameworks for family carers

From the perspective of supporting a work-life balance for caregivers, three dimensions seem to be important in assessing existing national LTC policies and ongoing trends within them (Saraceno 2010). First, the degree of universalism; second, whether public provision operates in kind (services) or rather through cash allowances; and third, the level of individual need covered by publicly-funded provision, through services or cash allowances. All three, but particularly the last two dimensions, have to do with patterns of familialisation-defamilialisation as conceptualised by, among others, Orloff (1993), Leitner (2003), Saraceno (2004 and 2010) and Saraceno and Keck (2010).

Familialism by default or ‘unsupported’ familialism (Saraceno 2010) occurs when there are no, or very scarce publicly-provided alternatives to family care, and no cash benefits. This type of familialism is sometimes also prescribed in civil law. ‘Supported familialism’ occurs, by contrast, when policies – usually involving income transfers but also with protected time-off for care – help family members fulfil their caring responsibilities. Such policies include paid or unpaid leave from employment, specific allowances for caregivers and extended social protection entitlements. ‘Defamilialisation’, finally, may occur in two different ways: through the provision of public or publicly-financed and regulated services substituting family care, or through direct (cash benefits) or indirect (tax deductions) income transfers specifically intended to buy services in the market.

Funding may occur through the public budget or through compulsory social insurance. Very similar levels and patterns of provision may be funded differently. This is the case for instance in Germany and Austria, countries with similar LTC systems, but where the German system is mainly funded by compulsory insurance (Pflegeversicherung), while the Austrian one is funded by federal and state budgets (European Commission 2016a: Vol. 2). Countries differ also with regard to whether, to what degree, and in what cases they operate a means test. When there is such a test, it usually concerns co-payment of services (as for instance in Austria and France).

Looking at these different policy dimensions, one can cluster the EU countries based on their degree of universalism, the degree to which they support defamilialisation or familialisation of long-term care and the degree to which they leave care mostly up to families, without any support.

Despite many reforms partially transforming national LTC schemes over the last decade (Ranci and Pavolini 2012 and 2015, European Commission 2016a), countries can be grouped as follows (Table 1):

- Group 1 features strong universalism, defamilialisation and weak familialism (both *supported* and *by default*): Sweden, Denmark, Finland and the Netherlands. These countries are characterised by a high level of spending on LTC and high levels of service coverage, helping family carers by reducing the amount of family care needed.
- Group 2 features universalism since all residents are covered; high or medium defamilialisation, but with strongly *supported* familialism and medium or high levels of familialisation *by default*: Austria, Belgium, the Czech Republic, Germany, France, Ireland, Luxembourg, Spain and the United Kingdom.
- Group 3 features reduced universalism, medium-low defamilialisation, medium *support* for familialism and medium or high familialism *by default*: this group is made up of Estonia, Italy, Lithuania, Portugal and Slovakia.
- Group 4 features reduced universalism and little service provision, thus little defamilialisation, high familialisation *by default*, but medium-low *supported* familialism: Hungary, Malta, Poland, Romania, Slovenia.
- Group 5 is characterised by the absence of universalism, no service provision, very high familialism *by default*, and low or very low *supported* familialisation: Bulgaria, Croatia, Cyprus, Greece and Latvia. All Group 5 countries are characterised by low percentages of LTC spending in terms of GDP and embryonic long-term care policies. This lack of policies is often politically justified by reference to family values and cultural attitudes.

Within this variety of arrangements, supported familialism – in the form of policies indirectly or directly supporting working family carers – is becoming increasingly important. We will turn, therefore, to these policies.

Table 1 Country groupings by patterns and degree of support to family carers' work-life balance

Universalism	Defamilialisation	Supported familialism	Familialism by default	Overall direct and indirect support for carer's WLB
1. Strong universalism and defamilialisation, weak supported familialism and familialism by default				
DK High No means-testing	High But decreasing because of decreasing time per person	Low No leave, or only in the case of impending death, no payment for care, no credits for social contributions*	Low but increasing	High
FI High No means-testing	High	Medium Informal carer support based on an assessment by local authorities; some cost-sharing	Medium	High
SE High But decreasing, because of focus on the severest cases; No means-testing	High But decreasing because of long waiting lists and restriction to the neediest; preference for home care	Low Support to carers for alleviating work load; Leave for care to a terminally ill relative. Some local cash benefits for dependent persons and carers	Low, but increasing	High
NL High No means-testing	High But the household composition and availability of household members is taken into account	Medium/low A family member may be hired as carer; respite care	Low but increasing	High
2. Universalism, medium defamilialisation, strong supported familialism, medium to high familialism by default				
AT High No means-testing	Medium-low	High Care allowance to the cared-for person; credits for pension contributions for family carers; co-payment of services	Medium to high	Medium

	Universalism	Defamilialisation	Supported familialism	Familialism by default	Overall direct and indirect support for carer's WLB
BE	High Regional differentiation Means-testing	Medium Vouchers may be used to pay for care	Medium to high Some cash benefits, credits for social contributions*	Medium	Medium
CZ	High Allowance no means-tested Support intended to cover only part of the individual need	Medium-low	High Leave, credits for social contributions*	Medium to high	Medium
DE	High Support for only part of the individual need. No means-testing	Medium Choice between services and allowance	High Allowance 'Pflegeversicherung' to the cared-for person, credits for social contributions*, respite care, etc.	Medium to high Both services allowances to pay only part of the need	Medium
FR	High Two universal benefits, based on the principle of cost-sharing No means-testing	Medium-high (allowances to buy care)	Medium-high specific tax deductions for the carer, credits for social contributions*	Medium to high	Medium
IE	High Means testing of the carer's allowance	Medium	Very high Specific allowances for family carers (carer's allowance, means-tested), credits for social contributions*	Medium to high	Medium
LU	High No means-testing	Medium	Very high Care allowance to the cared-for person if there is a preference for combining professional and informal care; credits for social contributions*, respite care, counselling	Medium to high	Medium
ES	Medium-high Universal system, but slow implementation Means testing Benefits based on cost sharing	Medium Preference for institutionalization. Care allowances to buy in care, except where no offer	Medium A means-tested care allowance to the cared-for person where no services are available; Social security rights of carers (Agreement with the Social Security body)	High	Medium-low
UK	Medium Means testing	Medium, with users' charges	Medium-high carer's allowance to the family carer, credits for social contributions*	Medium to high	Medium

3. Reduced universalism, medium defamilialisation, medium supported familialism, medium to high familialism by default						
EE	Medium No means-testing	Medium-low	Medium Carer's allowance and care allowance in alternative to services; credits for social contributions*	Very high	Medium-low	Medium-low
IT	Medium Targeted only to the severest cases, but without a clear national definition	Low Main measure: a care allowance. Great regional differences in the provision of services	Medium Cash benefits to the cared-for person, carer's leave, credits for social contributions*, some respite care	High	Medium-low	Medium-low
LT	Medium No specific LTC system No means-testing	Very low	Medium-low Local decisions on 'cash for care' in alternative to services; credits for social contributions*	High	Low	Low
PT	Medium-low Means-testing	Medium Services preferred to care allowances which must be spent to buy care	Medium-low Modest allowances where no services available, no credits for social contributions*	High	Medium-low	Medium-low
SK	Medium Separate LTC system Means-testing	Medium With a preference for home care	Medium-high Family carers (mostly out of the labour force) receive cash benefits; support services; credits for social contributions*	Medium to high	Medium-low	Medium-low
4. Reduced universalism, low defamilialisation, low supported familialism, high familialism by default						
MT	Medium-low Means testing	Very low	Very low Low cash benefits for the cared-for person; social pension for some category of family carers	Very high	Very low	Very low
PL	Medium-low No specific LTC system Means-testing	Low	Low Cash benefits for the cared-for person; credits for social security contributions*	High	Low	Low
HU	Low no specific LTC system; Weak coordination.	Low With a prevalence of institutionalisation; user's fees in services	Low No care allowance for the cared for person; a non means-tested carer's allowance	High	Low	Low
RO	Low No specific LTC system	Very low	Low Only a non means-tested caregiver indemnity to a disabled person's personal assistant	Very high	Very low	Very low

Universalism	Defamilialisation	Supported familialism	Familialism by default	Overall direct and indirect support for carer's WLB
SI Medium No specific LTC system; fragmented provision No means-testing	Medium	Medium Non means-tested allowances	Medium to high	Medium-low
5. No universalism, very low defamilialisation and supported familialism, very high familialism by default				
BG No statutory LTC system Means testing	Very low Increase of places in hospices for dependent adults. Deinstitutionalisation for children and increase in social services in community.	Very low Low means-tested cash benefits for the cared-for. Only child allowance system are non means-tested.	Very high	Very low
HR No Means-testing (Guaranteed minimum income beneficiaries only)	Very low	Very low Low cash benefits for the cared-for person (means-testing); credits for social security contributions*	Very high	Very low
CY No Fragmented organisation With the exception of some disability, means-testing (guaranteed minimum income beneficiaries only)	Very low	Very low Low cash benefits for the cared-for person (GMI condition); credits for social security contributions*	Very high	Very low
EL No No universal statutory LTC scheme, but provisions for the poor by municipalities	Low	Low No support	High	Low
LV No Very fragmented system. Responsibility on the municipalities	Very low	Very low No care allowance. Low municipal care allowances for the cared for or the carer	Very high	Very low

* Credits for social security contributions for family carers.

Sources: European Commission (2016a), ESPN (2016), MISSOC (2017), Saraceno and Keck (2010).

2.2 Work-life balance for carers in practice: the main social benefits for carers

The opportunities to reconcile caring and working depend on the type and level of social benefits available to both dependent people and caregivers. As described in Section 2.1, when domestic policies are more defamilialised, less support may be necessary for family carers. Yet, short of full institutionalisation, which is not the most suitable or humane solution for those needing care, some specific support is needed to help family members remain in paid work while providing care, even in the most defamilialised countries. Social benefits for family caregivers take the form of leave and flexible work arrangements but also cash and in-kind benefits⁸. Leave and flexible work arrangements specifically target carers in employment, while cash and in-kind benefits generally target all carers, irrespective of their employment status. But how they are framed may also influence a carer's options concerning her or his job.

Caregiving leave

As in the case of maternity and parental leave, caregiving leave is a crucial means to allow working family carers “time to care” without putting them at risk of being fired or forced to quit their jobs. As opposed to maternity and parental leave, however, caregiving leave is not available throughout the EU and has not as yet gained a strong foothold and legitimacy within the social policy framework. Furthermore, available forms of leave differ substantially: they may be short-term (a few days a year or month), long-term (six months or more), emergency only (as in the case of impending death), as well as paid or unpaid and with varying degrees of job protection. Short-term leave is usually intended to allow the carer to accompany a dependent family member to routine medical visits or to face an emergency. The aim of long-term leave, instead, is to allow a family carer to directly provide care for a longer stretch of time, from one to several months or even more than a year (e.g. FI, IT, MT, PT⁹). The distribution, as well as the combination, of these forms of leave differs across countries, as do eligibility rules (Eurofound 2015). In general, countries where supported familialism (e.g. Italy) prevails are more likely to provide a combination of long- and short-term leave, while countries with a high degree of de-familialisation (e.g. Denmark, Norway, Sweden) are more likely to provide only short-term emergency leave.

Eligibility depends on several criteria: the age group of the cared-for person (disabled child, disabled adult or frail elderly), the dependency degree assessed, whether or not the dependent person lives with the carer, as well as the latter's employment situation and his/her number of years paying into social insurance. Caregiving leave schemes for parents of disabled children exist in all European countries (except Slovakia), but fewer countries provide some form of leave for employees caring for frail elderly people.

8. A detailed presentation of social benefits for caregivers can be found in the European Social Policy Network (ESPN) Synthesis Report on Work-life balance measures for persons of working age with dependent relatives in Europe (Bouget *et al.* 2016). The study of national policies draws on 35 ESPN country reports which can be downloaded from the ESPN page on the European Commission website: <http://ec.europa.eu/social/main.jsp?catId=1135&intPageId=3589>.

9. For the countries' official abbreviations used in this chapter, see the list of country codes in this volume.

Still fewer countries provide – paid or non paid – caregiving leave schemes regardless of the age of the dependent person (AT, DE, DK, IE, IT, NL, SE, UK). Eligibility for leave also depends on the severity and type of dependency of the cared-for person. In some countries, eligibility and duration are left up to the employer's discretion (e.g. MT, RO – except for carers of disabled children), i.e. leave is not *stricto sensu* a social right. Leave provisions for parents of disabled children are usually better developed and their duration is usually longer than that granted to family carers of disabled adults or frail elderly people.

Whether or not and at what level caregiving is compensated is particularly crucial in the case of long-term leave. Indeed, if leave is not or only poorly paid, many carers may not be able to effectively make use of their entitlements or will have to choose between caring or remaining in their job. Compensation may be a proportion of previous earnings, very often 70-80% of previous earnings, as with sickness benefit (e.g. DK, PL for short-term leave), on full pay (as with short-term leave in Italy), or at a flat rate (BE, DK, HR, IT in the case of long-term leave). When it is not discretionary, leave allows the carer to continue being entitled to healthcare and building up social security rights for a pension. Job protection is guaranteed.

Flexible working arrangements

Recourse to flexible work arrangements – telework, personalised work schedules – or temporarily moving from full- to part-time work¹⁰ depends not only on the carer's individual and family resources, but also on the specific labour market situation and regulations. In some countries such as the Netherlands or Belgium, family carers have a right to flexible working arrangements and to temporarily work part-time. In most other countries, however, this right is weaker or does not exist at all as such: arrangements are left to individual negotiations and to the employer's discretion. Particularly in countries (e.g. the Eastern European ones) without many part-time jobs, scarce care services and non-existent caregiving leave, the impossibility of changing one's working hours and/or mode might mean that family carers in employment are faced with the stark choice of either leaving their job or not providing the necessary care.

Cash-for-care benefits

Cash-for-care benefits comprise three main types of care allowances, with the degree of support they offer to family carers in general, and specifically to carers in employment, varying according to the type of allowance and level of generosity. The first type is paid to the dependent person, based on the level of need and sometimes also income, and earmarked for employing a carer (e.g. in ES, FR, PT, SE and SI). This kind of allowance may be interpreted as a form of de-familialisation, as, while not directly providing a service, it provides the means to, obligatorily, buy care. In so doing, this allowance reduces the need for family care, thus enabling carers in employment to carry on working. In some countries, this kind of allowance may also be used to hire a family member. This is the case in Finland, Denmark and Sweden, where a family member may be directly hired by the municipality to provide care. In the Netherlands, the dependent person can use the 'personal care budget' to hire a carer, who may be a family member

10. More details in OECD (2016).

if the dependent person so wishes. In these cases, in particular low-income (mostly female) carers in employment can choose between their previous job and being paid to perform care, while formerly “inactive” family carers may become acknowledged paid working carers. In other countries, such as France, this is impossible, or, as in the United Kingdom, there are restrictions regarding which family member may be formally hired as a carer.

The second type of care allowance is also paid to the dependent person but can be used freely, i.e. it does not have to be spent on buying care. In some countries, such as Germany and Austria, the care allowance is offered as an optional alternative to services; in other countries, such as Italy, the care allowance is the only benefit available for dependent people at the national level, although at the local level there may be also services. According to national ESPN studies (e.g. AT, DE, IT), in many cases this care allowance is used to pay for care in the informal (often migrant) labour market, or to informally compensate the family caregiver (see also Bettio *et al.* 2006, Keck and Saraceno 2010). However, there is no statistical data on how widespread this practice is.

The third type of care allowance is the carer’s allowance. It is specifically provided to the family carer, who must apply for it (e.g. BE –allowance for assistance to the elderly – MT, PL, RO, SI – only for parents of disabled children –, SK, UK)¹¹. Eligibility criteria vary according to the age and severity of disability of the dependent person, the carer’s earnings, whether or not the carer is in employment, whether she/he has a legal/permanent residence in the home of the dependent person (or vice-versa), the age of the carer, gender (MT) or marital/civil union status (MT). As opposed to the first type, this care allowance does not constitute a formal wage and is not based on a formal work contract.

In all countries providing carers’ allowances, carers build up social security entitlements towards the old age pension¹². Some countries grant similar social security entitlements even in the absence of a carer’s allowance (e.g. AT, DE, ES, HR). The person must be recognised as being the main carer, with no additional help from social care services or from a hired person paid through a publicly financed allowance. Furthermore, while in some countries, e.g. in France, these contributions are an alternative to those accrued through employment in the same period, in other countries (e.g. Germany), the two categories of contribution may be cumulated.

Interestingly, while care allowances paid to the dependent person are exempt from taxes, allowances paid directly to the family caregiver are usually taxed, i.e. treated as earnings.

11. In Norway, a discretionary cash benefit (omsorgslønn) is paid by the municipality to a caregiver who has particular burdensome care work (MISSOC 2017).

12. In the literature, these credits are sometimes referred to as ‘virtual contributions’ or ‘fictitious contributions’.

Benefits in kind for caregivers

In addition to leave and carer's allowances, many countries have a well-developed scheme of benefits in kind specifically tailored for caregivers. These may include respite care (a short break from caring duties), training, counselling, information through hotlines and internet sites as well as psychological support. In almost all countries, benefits in kind for parents of disabled children are the most widespread, while far fewer are available for the care of the elderly.

The type and number of these benefits may vary considerably between urban and rural areas, between political/administrative bodies and levels of government (federal entities, administrative institutions and regions/municipalities). Voluntary organisations also provide training, counselling and psychological support to caregivers (e.g. CZ, DE, DK, EE, EL, LT, LV, UK).

3. Tensions between long-term care policy trends and caregivers' work-life balance: shifting responsibilities

According to various studies, the institutional framework (i.e. the policies in place) is the most important driver of decisions concerning whether and how much to care for a dependent family member, as well as of the gender gap in caring (e.g. Haberkern and Szydlik 2010, Da Roit *et al.* 2015). In this respect, there is a risk that some reforms of LTC institutions may paradoxically endanger the goal of improving the work-life balance of female caregivers.

3.1 The flipside of deinstitutionalisation

Deinstitutionalisation, i.e. reducing the number of beds in residential or nursing homes, has been a consensual LTC policy objective of many European governments. It was expected to create a win-win situation, increasing the well-being of those receiving care and allowing them to remain in their habitual setting, while at the same time being more cost-effective than institutionalisation. De-institutionalisation was also supposed to have a positive effect on stimulating technological and other innovations enabling dependent persons to maintain their autonomy as long as possible. In most developed LTC schemes, especially in the Nordic countries, deinstitutionalisation has indeed been matched by increasing provision of in-home care and innovative solutions (e.g. welfare technology, etc.). Moreover, in-home care demand is an expanding employment sector (e.g. in Germany) and can lead to potential job creation in personal services. Last but not least, home/community-based care may be more acceptable than institutional care to both dependent people and their families, thereby possibly increasing the take-up of LTC measures. A model providing adequate benefits in kind for dependent people could thus be particularly effective not only in reducing their dependency on family members, but also in improving both their quality of life (with respect to institutionalisation) and the work-life balance of family carers. At the same time, it might also contribute to increasing labour demand.

However, deinstitutionalisation does not automatically result in a better balance between family obligations and work, because it often means shifting responsibility from the formal sector to the family. The expansion in home care services has not always matched the increase in care needs (Jenson and Jacobzone 2000: 12). The main reason why at-home care costs less than residential care is precisely because part of the work is shifted to the family as non-paid work. This is the flipside of deinstitutionalisation. Since 2008, in a context of budgetary constraints¹³, the transition from institutional to community-based services has often been insufficient and has created different forms of rationing, especially waiting lists, while also negatively impacting family carers' employment. These changes disproportionately affect women, who are sometimes forced to reduce their working hours or to quit their jobs, or to reduce their leisure and rest time and time for their partner or children.

3.2 The flipside of care allowances

Care allowances provided to dependent people or to carers may support, or on the contrary disincentivise, family carers' employment, depending on the level of the benefit, its rules of use, the national culture of care, the traditional or legal obligation to care for dependent family members and the income of both the cared-for person and the caregiver. From the literature and the analyses contained in the national ESPN reports, we can identify three different types of cases discouraging employment.

First, as described in Section 2.2, few countries provide cash benefits specifically targeting caregivers. Unless this payment is specifically framed as a wage (as in Finland) and the caring relationship defined (also) as an employer-employee relationship, carers may be prone to assessing the trade-off between this 'money in the pocket' and the loss of money earned in the labour market. For unskilled and low-income workers, the trade-off may appear positive in the short term, incentivising them to withdraw from the formal labour market. They may, however, not be able to return to it when the care period ends. Furthermore, if the time spent caring has not been recognised through state pension contributions, they also risk severe old-age poverty.

Second, the same negative effect on employment may also occur when the care allowance is paid to the cared-for person to be used freely and as an (optional or mandatory) alternative to the provision of services, in cases where the family carer and the cared-for person share the household budget, and/or the allowance is used to informally compensate the former. Where the allowances are relatively high (e.g. DE, LT, IT), caring needs intensive and the market wage of the carer low, the trade-off between remaining in employment and caring might appear to be in favour of the latter, particularly for workers on low wages.

13. The national ESPN reports underline several shortcomings in LTC services due to this process: a shortage of beds and waiting lists to enter a residential home (e.g. CZ, EE, MT, PLSI), the underdevelopment of in-home care (e.g. CZ, LT, PL, SI), cuts in public expenditure on LTC services (UK) or a glaring lack of investment (e.g. IE, RO, SI) for dependent persons.

Third, when the cash benefit for the dependent person or carer is low (e.g. CZ, EE, FR, HU, IE, LT, LV, NL, PL, PT, RO, UK) and services are scarce, absent or costly, low-income family carers of low-income dependent people may be forced to stop working or reduce their working hours for lack of alternatives.

Overall, there is a risk of care allowances, when not regulated as formal wages within formal work contracts, creating very precarious workers – be they family members or not – in a new grey economy of home-based care services. According to various studies, this semi-formal labour market is often staffed by migrant workers, particularly, but by no means exclusively, in the Southern European countries, where, with the help of care allowances unregulated in their use, migrants are increasingly standing in for missing LTC services and declining availability of family carers (e.g. Bettio *et al.* 2006, Kilkey *et al.* 2010).

4. A new EU approach to work-life balance and long-term care policies?

This section presents the main developments in work-life balance policies at EU level in 2016. As many scholars point out, EU work-life balance policies have a considerable impact on domestic developments in this area (Jacquot *et al.* 2012; Graziano *et al.* 2011; Caracciolo di Torella and Masselot 2010). We argue that 2016 has been a milestone in a process which has been underway over the past decade. Nevertheless, despite these positive developments, we also raise some concerns regarding the combination of ambitious work-life balance (WLB) policies for carers with budget constraints and the increasing importance of in-home care in the EU discourse.

Work-life balance policies are one of the pillars of the EU social policy objectives (Ghailani 2014: 161), and the EU has undeniably become a key player in the development of work-private life reconciliation policies as a *sine qua non* for ‘de facto equality’ between the two sexes in the European Union (Council of the European Union 2000). The principle of reconciling family and working life is also enshrined in primary EU law, i.e. in Art. 33 of the EU Charter of Fundamental Rights. More concretely, this principle has been reinforced through secondary legislation such as the Directives on Equal Treatment¹⁴, on Pregnant Workers¹⁵, and on Parental Leave (recast)¹⁶. However, these policies relate principally to families (and mainly mothers) with young children. A terminology shift in policy only occurred in 2008 with the European Commission’s introduction of its WLB package enshrining reconciliation as a right for everybody and not only for individuals with families (Caracciolo di Torella and Masselot 2010). Nevertheless, in practice caring

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14. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
 15. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
 16. Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BusinessEurope, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.

responsibilities have been considered only narrowly – putting the emphasis on young children – while ‘only lip-service’ has been paid to caring for disabled adults and the elderly (Caracciolo di Torella and Masselot 2010: 6).

Ideational and policy change gained momentum in 2015 when the Juncker Commission launched the initiative ‘A new start to address the challenges of work-life balance faced by working families’ (European Commission 2015a)¹⁷. This ‘new start’ was also strongly reflected in the 2016 Commission work programme (European Commission 2015b), proposing both legislative and non-legislative measures in the area of WLB for carers of dependent persons. The main objective of these new initiatives was to increase the labour market participation of caregivers, and in particular of female carers of dependent persons, by modernising and adapting the EU legal and policy framework to today’s labour market¹⁸. There has thus been a clear shift in the EU’s terminology and policy commitments towards the work-life balance of carers of dependants of all ages (children, adults and the elderly), focusing on both men and women and not solely on mothers looking after young children.

In this context, the European Commission undertook a two-stage consultation (European Commission 2015d) in November 2015 and July 2016 with the European social partners¹⁹ on their views regarding possible improvements to EU legislation (European Commission 2016c and 2017) in the area of work-life balance with a view to amending the Framework Agreement (made binding by Council Directive 2010/18/EU) on Parental Leave.

However, negotiations between the European social partners never got off the ground, with the strongest opposition coming from two top-level European employers’ organisations²⁰. The employers proposed mainly non-legislative measures, considering that further EU legislative measures would bring more rigidity into the work relationship, increased costs to employers and public budgets, and new administrative burdens for companies (BusinessEurope 2015). On the other hand, the trade unions strongly supported new legislative measures such as the revision of the Directive on parental and carers’ leave, as well as increasing the duration, pay and dismissal protection of maternity leave (ETUC 2016).

17. With this new initiative, the Commission intended to make a clean break with the failure of its proposal to revise the Pregnant Workers Council Directive (92/85/EEC). Indeed, in 2008 the Commission proposed a revision of this Directive, including a longer period of leave, its better remuneration and more rights for mothers, which encountered a clear lack of support in the Council. This led to the proposal’s withdrawal in 2015.

18. This shift has gradually gained in visibility in EU reports such as Council of the EU (EPSCO) 2014 report on Adequate social protection for long-term care needs in an ageing society, in 2014; The 2015 European Commission Ageing Report (European Commission, 2015c), the Joint Report on Health Care and Long-Term Care Systems and Fiscal Sustainability (European Commission, 2016a). The EU has been emphasising the need to develop sustainable long-term care strategies and services, reflecting in particular on the work-life balance of carers.

19. According to the Article 154 of the Treaty on the Functioning of the European Union (TFEU), before the Commission may submit proposals in the field of social policy, it must organise a two-stage consultation with the European social partners. If the negotiations between the latter to conclude an agreement at Union level fail, the Commission has the power of initiative to submit proposals for legislation in this field.

20. We refer to BusinessEurope and the European Association of Craft, Small and Medium-sized Enterprises (UEAPME). By contrast, the European Centre of Employers and Enterprises providing Public Services and Services of general interest (CEEP) was finally willing to enter into negotiations.

Faced with the failure of negotiations between the European social partners, the Commission moved into the driving seat, issuing a proposal on 26 April 2017 for a new directive on work-life balance for parents and carers – designed to replace the former Parental Leave Directive (2010/18/EU) – as well several non-legislative measures in the context of the launch of the European Pillar of Social Rights (European Commission 2016d). This proposal is intended to strengthen existing rights of family carers and to create new ones, including the right to five days a year of paid caregiving leave and flexible working arrangements for parents and carers. The new rights are supposed to improve their work-life balance, as well as preventing carers leaving the labour market because of caring demands. Furthermore, with a view to boosting the role of male carers (for young children), the proposed directive also introduces an individual entitlement of ten working days of paternity leave, paid at least at sick-pay level, as well as revising the current measures on parental leave: at least four months' leave (non-transferable between parents), again paid at least at sick-pay level.

Emphasising the role of the carer whatever the age of the dependent person in an ageing Europe is inevitably linked to the development of LTC benefits and services. In this respect, the *Joint Report on Health Care and Long-Term Care Systems and Fiscal Sustainability*, published in 2016 (European Commission 2016a), represents a milestone in the EU policy discourse, with the Commission for the first time clearly distinguishing between long-term care and healthcare. Moreover, the report also clearly emphasises the importance of work-life balance for family carers. Along with the strong emphasis on the financial sustainability of the reforms, the report also suggests that care services should specialise in at-home care for persons with low or medium dependency, with institutionalisation only for the most dependent persons (European Commission 2016a: 202).

In line with this new approach, the Annual Growth Survey (AGS) for 2017, published in November 2016 (European Commission 2016d), for the first time pinpoints the clear separation between 'long-term care' and healthcare, identifying the former as an autonomous pillar of social protection. It also emphasises the development of LTC facilities for improving carers' WLB: 'Investments also need to focus on human capital and social infrastructure. The development of long-term care services and affordable and flexible childcare facilities is particularly important to decrease care obligations towards the elderly and children, frequently affecting women' (European Commission 2016d: 7).

These new EU initiatives and changes in policy scope can, however, be seen as ambivalent in their meaning and goals. The aim of improving the work-life balance of family carers and helping them to remain in the labour market stands side by side with the idea of reducing costs to public budgets through greater recourse to at-home family care. Moreover, the proposed new directive improving the work-life balance of parents and carers may lead to irreconcilable positions between unions and employers at national and European level. For instance, along with questioning its political legitimacy, BusinessEurope considers that the 'extension of leave and other working arrangements can hardly be afforded by our societies and companies. The EU employer's organisation 'strongly oppose the idea to introduce an EU-wide carers' leave',

seen as creating obstacles and ‘counterproductive effects on women’s employment’ (BusinessEurope 2017). Finally, as shown in this chapter, in most EU countries, carers’ paid leave is provided only for individuals with young children, and some countries do not provide any form of paid leave for working carers of disabled or elderly family members. The recognition of ‘carer’ status, except for that of mothers of young children, is only in its infancy at EU level, and its ‘customisation’ (full social protection status, etc.) depends strongly on future political struggles within the Council.

Conclusions

A multi-pronged approach is needed to address the challenges in the area of long-term care (see also Eurofound 2015). With regard to caregivers in employment, suitably organised long-term community- and home-based care services are needed to support dependent persons and their carers, together with flexible and paid leave arrangements, flexible work arrangements and credits for social security contributions. Full institutionalisation should only be used for the most severe cases, for both financial and humanitarian reasons, while there might be different degrees of semi-institutionalisation, such as assisted housing.

Overall, the current broad differentiation in coverage and kinds of national benefits available to caregivers is the result both of the unequal development of LTC schemes and of different expectations concerning the involvement of family members in caring for their disabled relatives. At the same time, one emerging trend is the development of a somewhat grey area between totally unpaid family care and highly formal and regulated paid care. Indeed, family carers increasingly receive some form of compensation, although not always a wage with all the related social security trappings. Whether this development represents a positive acknowledgement of the economic value of family care and of its cost for the caregiver – or is in fact a way of justifying the inadequacy of public provision of LTC services and of work-family policies supporting caregivers – remains to be established.

The countries that are most supportive of carers are those which have universal (or near universal) provision of services, or which reduce the amount of care needed to be given by family members through care allowances tied to buying care. Policies geared to supporting exclusive (or near-exclusive) family-provided care through care allowances (as different from wages) given to the family carer risk disincentivising labour market participation among low-skilled women or those with heavy care responsibilities, making them vulnerable to poverty when the caring period ends. Less supportive countries provide no services, no leave and no form of care allowance, or only very low care allowances. It should be added that they are neither supportive of carers (whether in employment or not) nor of the dependent persons themselves.

The EU work-life balance priority launched in 2016, with a specific dimension regarding informal care for disabled persons or elderly persons, is an important step in a long virtuous process towards converging LTC policies sustainable both for public budgets and for family carers. However, the outcome of this process is uncertain, for various

reasons. First, due to the principle of subsidiarity, national LTC policies remain within the competency of each Member State and limit the potential of EU initiatives, in a context characterised by wide cross-national differences in expenditure (Figure 2), in the level of coverage and in forms of support. These cross-country differences are further amplified by the varying impact of EU and national austerity measures, with some of the countries with less-developed LTC policies among the most negatively affected. Second, some policy developments may have unintended consequences, impacting people with very unequal resources and different personal options within each country as well as across countries. Third, it should be pointed out that the focus of the EU policy discourse in this field is exclusively on caregivers in employment. No account is taken of the needs of caregivers outside the labour market, despite the fact that in many European countries they constitute the majority of carers.

Finally, we should highlight the changing meaning of informal care at the national policy level and in the EU discourse. Reforms in favour of caregivers are gradually turning informal family care into an embryonic statute for workers (credits for social security contributions, carers' allowances, etc.). But there is a risk that this process will clash with the increasing desire of old people to remain autonomous, not always wanting to be dependent on practical support from their children (provided they have any). There is also a risk of the refamilialisation of informal care colliding with the historical trend of increased female labour market participation as well as with demographic and family changes.

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Chapter 9

An ageing active population in Europe: challenges, policies and practices

Ramón Peña-Casas

Introduction

Since the beginning of the 1990s, the issue of population ageing has been on the political agenda of most Member States of the European Union (EU). Improvements in living conditions and scientific progress have helped to gradually prolong life expectancy. The average age of the European population is rising even more quickly because fertility rates are falling, in many cases below the required replacement threshold. These demographic trends have coincided with radical changes, exacerbated by the economic crises of recent years.

Known for years, the problem faced by European societies due to the growing population share of the (dependent) elderly, combined with the associated reduction in the labour force, has been with us for some time. The growth of this section of the population is exerting strong pressure on social protection resources, since of the rise in expenditure (healthcare, long-term care, pensions, etc.) must come from contributions and taxes paid by a shrinking younger labour force (European Commission 2015a and 2004). The pressure exerted by the EU on its Member States is even greater, since countries' short- and long-term social expenditure is now limited by the lasting budgetary constraints imposed by the EU's new economic governance framework (Stability and Growth Pact, European Semester), and the long-lasting consequences of the economic crisis. National social protection systems are caught between the wish to maintain, and even improve, the adequacy of their schemes, and the need to ensure financial sustainability. This is a challenge common to all EU countries, although the extent of the problem varies according to national circumstances (SPC 2015).

In a context of globalisation, population ageing is seen as a universal issue. For this reason, international institutions such as the United Nations (UN) and its agencies – the World Health Organization (WHO), the International Labour Organization (ILO) –, but also the World Bank (WB), the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD), have developed analyses and strategies to tackle the consequences of ageing observed in many countries. The ability of individuals, companies and societies to adapt, as well as the capacity of decision-makers and institutions to generate sound structural and behavioural change, will play a key role in determining the outcomes of this ageing process (WHO 2002).

The multi-dimensional concept of 'active ageing' promoted by the EU (see Section 2) was developed by the work of these institutions, reflecting the need to develop integrated approaches to the problem of ageing. According to the definition given by the WHO

in 2002 and used in the documents from the European institutions, ‘active ageing is the process of optimising opportunities for health, participation and security in order to enhance quality of life as people age. It applies to both individuals and population groups. Active ageing allows people to realise their potential for physical, social and mental well-being throughout the life course and to participate in society, while providing them with adequate protection, security and care when they need’ (WHO 2002: 12). The concept of active ageing, therefore, extends the scope of political action from the financial sustainability of systems to general social inclusion, participation in society and the quality of life of a healthier ageing population. Being ‘active’ means continuing to take part in social, economic, cultural, spiritual and civic life, and is not solely about having a job. Although the need to maximise employment, particularly by encouraging older people to remain active as long as possible, has become one of the main forces behind the political reforms in the EU countries, the broader scope of active ageing should also be taken into account (Zaidi 2008).

Within this multi-dimensional context, this chapter focuses more particularly on the reforms and policies introduced in the EU to encourage economic activity among older people. The first section briefly describes the situation of older people in EU labour markets. We then examine the initiatives taken by the European institutions to promote labour market participation of older members of society (Section 2). Special attention is given to the recent framework agreement signed by the European social partners (Section 3). We go on to look at measures taken by EU Member States (Section 4) before drawing overall conclusions, emphasising that while youth unemployment has become a priority for the EU, particular attention should also be given to encouraging the participation and social inclusion of an ageing European population (Section 5).

1. What is the situation of active older people in the EU Member States?

The table below summarises the main parameters used to describe the employment status of older workers aged between 55 and 64.

In 2015, the employment rate of those aged 55–64 was 53.3% for the EU-28. This European average masks wide disparities between the European countries: the employment rate is below 40% in several Member States (Greece, Slovenia, Luxembourg, Croatia), and above 60% in others (e.g. Germany, Estonia, Denmark and the United Kingdom), reaching as high as 74.5% in Sweden. Between 2000 and 2015, this rate increased in almost all the countries, except for Romania, and, to a lesser extent, in Greece, Portugal and Cyprus, where a decline was recorded. For the EU-28, the employment rate of older workers has, since 2000, risen by an average of 15.6%, with this rise particularly striking in certain countries (Bulgaria, Germany, Italy, Latvia, Hungary, the Netherlands and Slovakia)¹. On the other hand, some countries, notably Romania and Greece, have seen a fall in the employment of older people since the beginning of the millennium.

1. Data concerning the time series for employment and unemployment rates are not presented here, due to a lack of space. They are, however, available on the Eurostat website: <http://ec.europa.eu/eurostat/data/database>

Table 1 Rates of employment, part-time employment and unemployment among people aged 55-64, 2015

	Employment			Part time			Unemployment		
	Total	Men	Women	Total	Men	Women	Total	Men	Women
EU-28	53.3	60.2	46.9	22.1	10.7	35.9	7.0	7.5	6.3
Austria	46.3	54.1	38.8	29.0	12.8	50.5	4.7	5.7	3.4
Belgium	44.0	48.9	39.3	33.6	18.4	52.2	5.6	6.3	4.7
Bulgaria	53.0	56.8	49.5	2.8	2.2	3.6	8.7	9.4	8.0
Croatia	39.0	48.0	30.6	8.8	7.2	11.3	11.6	12.2	10.6
Cyprus	48.5	57.8	39.5	16.9	13.7	21.4	15.6	17.4	12.8
Czech Republic	55.5	65.5	45.9	7.6	4.4	12.0	4.4	4.0	4.9
Denmark	64.7	69.8	59. ⁶	20.0	10.2	31.3	4.4	4.0	4.8
Estonia	64.5	63.1	65.7	9.7	6.5	12.2	6.0	6.9	5.4
Finland	60.0	57.4	62.5	15.3	12.6	17.7	8.0	9.2	7.0
France	48.8	50.8	47.0	22.5	10.7	34.3	7.4	8.0	6.8
Germany	66.2	71.3	61.2	30.2	10.7	52.0	4.7	5.2	4.1
Greece	34.3	44.9	24.7	8.0	5.0	13.1	17.5	18.1	16.5
Hungary	45.3	54.4	37.7	10.3	6.7	14.7	5.8	6.0	5.5
Ireland	55.6	64.9	46.4	25.9	13.4	43.0	7.6	9.2	5.3
Italy	48.2	59.3	37.9	13.7	6.8	23.8	5.5	6.4	4.3
Latvia	59.4	60.1	58.9	9.3	6.7	11.4	9.3	11.6	7.3
Lithuania	60.4	62.4	58.8	11.1	8.2	13.5	8.7	10.6	7.1
Luxembourg	38.4	43.0	33.7	25.5	10.1	46.1	4.7	5.4	:
Malta	40.3	58.8	21.9	14.5	7.0	34.5	4.8	5.3	:
Netherlands	61.7	71.1	52.4	49.2	25.4	81.3	8.1	8.4	7.6
Poland	44.3	54.2	35.5	10.4	7.1	14.7	5.4	5.9	4.8
Portugal	49.9	56.0	44.5	16.5	12.9	20.6	12.5	13.9	10.7
Romania	41.1	51.2	32.1	15.1	12.3	19.2	3.7	4.8	2.2
Slovakia	47.0	53.6	41.0	7.3	5.0	10.0	9.3	8.2	10.6
Slovenia	36.6	42.6	30.5	13.4	11.0	16.8	7.8	8.1	7.2
Spain	46.9	54.0	40.2	12.4	5.1	21.9	18.6	18.5	18.7
Sweden	74.5	76.8	72.1	24.6	13.9	36.2	5.3	6.1	4.6
United Kingdom	62.2	68.7	56.0	30.9	15.9	48.7	3.4	3.8	3.0

Source: European Union labour force survey, online Eurostat database: <http://ec.europa.eu/eurostat/data/database>

Those aged 55-64 are more likely to work part-time than younger people. In 2015 in the EU-28, 22.1% of older workers were working part-time, compared to 17.6% in the 25-54 age group. This is particularly true in the Netherlands (49.2%), where part-time work is more frequent for all ages than in other European countries, but also applies to a lesser extent in Belgium, Germany, Austria, the United Kingdom and Ireland (around 30 %).

Employment rates of men aged 55-64 are generally higher than those of women of the same age. While the European average employment rate of older men was 60.2% in 2015, it was only 46.9% for women. Only in Finland and Estonia are female employment rates (slightly) higher than those of men. In the rest of the EU, employment rates of older women are below those of older men – sometimes much lower, by almost 20 percentage points (e.g. in Italy, Greece, the Czech Republic, Romania but also in the Netherlands). While older women are less often in work than their male counterparts, this work is more frequently part-time for women. In 2015, 35.9% of women in Europe aged 55-64 were working part-time, compared with only 10.7% of men in the same age range. The gender differences are particularly large in some Member States, where almost half of older women work part-time (e.g. in Belgium, Germany, Austria, the United Kingdom and Ireland). This share climbs as high as 81.3% in the Netherlands, the absolute European champion of female part-time work.

The unemployment rate of people aged 55-64 in the EU-28 reached 7% in 2015, with higher figures in Greece and Spain (around 17%) than in the other European countries. Unlike trends in employment rates, the unemployment rate for older people has, overall, varied very little since 2000. It has, nevertheless, fallen considerably in some countries, mainly Eastern European countries (the Baltic States, Poland, Bulgaria, the Czech Republic and Slovakia), but also in Germany. Since 2000, unemployment among the 55-64 age group has increased noticeably, however, in other countries (for example in Greece, Cyprus, Portugal, Spain, the Netherlands, Ireland and Luxembourg). While there are clear differences between the employment rates for older (55-64) and younger (25-54) people, this is less the case for unemployment rates, which are relatively similar for the two age groups. The higher employment rate of older people is due, in particular, to the greater incidence of long-term employment among older workers, and to the fact that fewer older workers change to new jobs. However, once unemployed, older workers have even less access to employment since they come up against a clear unwillingness of employers to take on older workers. According to the Eurobarometer survey on the perception of discrimination in the EU in 2015, age is the strongest discriminatory factor in recruiting, mattering more than physical appearance or nationality (European Commission 2015b).

Despite existing legal provisions at European and national levels banning age discrimination, and despite financial incentives offered to encourage the hiring and/or retaining of older workers, employers' 'culture' does not always favour older (unemployed) workers. This discrimination is closely linked to myths concerning supposed drops in productivity, together with the higher wage costs incurred (Lallemand and Rycx 2009). Older people are also thought to be less open to innovation and vocational training, particularly with regard to new technologies (European Commission 2016; Börsch-Supan 2013; Ghosheh 2008). Training generally allows

workers to maintain or improve their skills and career prospects, thus helping to delay early departures from the active population. Older workers, however, tend to be less involved than younger people in training and continuous learning, resulting in higher levels of skills mismatch (CEDEFOP 2015).

2. What initiatives have been taken by the EU institutions?

The issue of active ageing has been referred to explicitly at European level since the mid-1990s featuring the European Year of Older People and Solidarity between the Generations in 1993, and the publication in 1994 of the white paper on ‘Growth, competitiveness and employment’. The inclusion of a specific chapter on employment into the Amsterdam Treaty in 1997 enabled the launch of the European Employment Strategy (EES), which would provide the framework for the development, in later years, of an active ageing policy, largely taking an activation approach (Peña-Casas 2010). At the beginning of the millennium, the launch of the Lisbon Strategy covering the period 2000-2010 confirmed the emphasis placed on active ageing. Two quantified targets were even set for 2010 at the European Councils in Stockholm in 2001 and in Barcelona in 2002. The Stockholm target was to increase the EU’s average rate of employment for older women and men (55-64) to 50%. The Barcelona target was to increase, gradually, the average effective age when people stop working by around 5 years, highlighting one of the other reform priorities of the Lisbon Strategy – pension reform. An evaluation of the Strategy carried out by the European Commission in 2010 showed that the most important targets had not been met², although it underlined that the Strategy had helped to build broad consensus on the reforms that the EU needed, to make the economy more resilient and to deliver concrete benefits for EU citizens and businesses (European Commission 2010).

The Europe 2020 Strategy, which took over from the Lisbon Strategy for the period 2010-2020, includes these reform priorities of active ageing and pension reform, while taking care not to explicitly renew or prolong the unmet Stockholm and Barcelona quantified targets. Europe 2020 focuses even more on cost control and reining in expenditure linked to the ageing of the European population (Daly 2012). The economic crises which have been crippling European economies since 2008 have accentuated this trend, combining it with added budgetary austerity linked to EU economic governance. Active ageing priorities are now included in the narrow and focused framework of the ‘Agenda for New Skills and Jobs’ flagship initiative, the aim of which is to achieve full employment in Europe. To meet this goal, it is vital to make better use of the potential of older Europeans. Equally, reforms of national or regional social protection systems in Europe, particularly pensions, healthcare and long-term care, are seen as an important

2. By 2010, the Stockholm and Barcelona targets had not been met: according to Eurostat data, the employment rate of people aged 55-64 in the EU-27 increased from 36.8% in 2000 to 46.3% in 2010, below the 50% of the target. Nevertheless, the target was met by 2015, when 53.4% of the 55-64 age group was in employment. Similarly, the average actual age when people stop working increased from 60.8 in 2002 to 61.6 in 2010 – far from the 5 years hoped for. However, while progress is slow, the long-term prospects point to an increase, although the average retirement age had been on a downwards trend since the 1970s (Eurostat online data: <http://ec.europa.eu/eurostat/data/database>).

component of a constructive response to population ageing. Financing of these systems is also affected by the current economic crisis, which has resulted in high public deficits and levels of indebtedness. One of the most important questions raised at EU level is, therefore, how to restore balance to public finances and ensure the sustainability of social protection systems without excessively penalising younger generations.

The 2012 launch of the European Year for Active Ageing and Solidarity between Generations was the moment in recent years when active ageing was most visible on the European agenda. The European Year had the following objectives: to raise general awareness of the value of active ageing and solidarity between generations, to hold debates and exchanges on the subject, and to promote activities helping to combat or overcome age discrimination. A measurement tool, the active ageing index, was also developed in collaboration with the United Nations³. In the course of the year, hundreds of separate initiatives on active ageing took place at European and national levels, mainly aiming to improve information on active ageing and to encourage the exchange of ‘good practices’, i.e. successful policies pursued by the public authorities or by businesses (Tymowski 2015).

One of these many initiatives was the joint compilation by the European Employment Committee (EMCO) and the Social Protection Committee (SPC) of a list of 19 guiding principles to promote active ageing in the EU Member States. These principles were adopted by the European Council in its 2012 Declaration on the European Year for Active Ageing and Solidarity between Generations: the Way Forward (European Council 2012). These 19 principles, which are still relevant, were divided into the three main areas for action in the European year: employment, participation in society and independent living. They are set out in Annex 1.

The issue of active ageing, or, at any rate, the aspects linked to employment and transitions to retirement, has not disappeared from the European agenda and the Europe 2020 Strategy. The EU’s powers in this field are however *de facto* limited, since most levers for change are in the hands of (large) companies and social dialogue. According to Naegele and Walker (2006), European companies use eight key types of practice to actively manage an ageing workforce: recruitment, learning, training and life-long learning, career development and planning, flexible working time practices, workplace design and adaptation, redeployment, managing employment exit and the transition to retirement, and, finally, a comprehensive approach combining all other aspects.

As we shall see in Section 4, many reforms of social protection and labour market policies are dealt with by social dialogue in several EU countries: social dialogue between social partners for employment-related aspects, but also dialogue with civil society when taking a multi-dimensional approach to active ageing. At European level, the main development in 2016 in this area emerged from cross-industry social dialogue: the signing of a framework agreement on active ageing.

3. The 22 indicators combined in the ‘active ageing index’ (AAI) cover four areas: employment, participation in society, independent healthy and secure living, and capacity and enabling environment for active ageing. <https://statswiki.unece.org/display/AAI/Active+Ageing+Index+Home>

3. European Framework Agreement on Active Ageing and an Inter-Generational Approach

In December 2016, as a follow-up to the European Year of Active Ageing in 2012, and in line with the guidelines set out in their 2015-2017 work programme, the European social partners concluded negotiations on an Autonomous Framework Agreement on Active Ageing and an Inter-Generational Approach⁴. The framework agreement was formally signed on 8 March 2017 by the ETUC (European Trade Union Confederation), Business Europe, UEAPME (European Association of Craft, Small, and Medium-sized Enterprises) and CEEP (the European Centre of Employers and Enterprises providing Public Services and services of general interest). The purpose of the agreement is to promote information and exchange of practices aimed at maintaining good working conditions throughout working life, and at enabling people to work until the statutory retirement age, in good health. This approach also emphasises the need for inter-generational solidarity, allowing the transfer of know-how and skills between workers of different age groups. Promoting lasting, good-quality jobs in inclusive labour markets, which was the purpose of the previous framework agreement signed in 2010⁵, also fits in with this inter-generational approach.

The 2016 framework agreement constitutes an undertaking by the social partners to cooperate in five priority areas: strategic assessments of workforce demography, health and safety at the workplace, skills and competence management, work organisation for healthy and productive working lives, and an inter-generational approach.

Strategic assessments of workforce demography should take advantage of existing tools, or develop these further, looking particularly at specific questions such as the current and projected age pyramid, skills, qualifications and experience, working conditions, including job-specific health and safety considerations – particularly for arduous occupations – as well as developments linked to digitalisation and innovation. These strategic assessments, although not an absolute requirement when establishing suitable measures to address active ageing, would help to provide a basis for employers, workers or their representatives, in accordance with national practices and procedures, to evaluate risks and opportunities and take necessary actions to adapt to changing demographics.

The protection of health and safety at the workplace is naturally one of the core concerns of social dialogue. In this case, the idea is to have relevant information enabling the identification of tasks which are particularly physically and/or mentally demanding, in order to anticipate, prevent and assess risks for health and safety at the workplace, in accordance with the EU framework directive on health and safety at work (89/391/EEC) (Ponce Del Castillo 2016). This should indicate whether practicable adjustments to the working environment are necessary to prevent or reduce identified excessive

4. https://www.etuc.org/sites/www.etuc.org/files/press-release/files/framework_agreement_on_active_ageing_003.pdf

5. http://resourcecentre.etuc.org/linked_files/documents/FR%20%20Framework%20agreement%20ILM%20final%20agreed%20BE+ETUC.pdf

physical or mental demands on workers, allowing them to be safe and healthy while at work until the statutory retirement age. The framework agreement makes a number of suggestions for suitable tools/measures:

- adjustment of work processes and workplaces;
- re-distribution/allocation of tasks to workers;
- effective prevention strategies and risk assessment, taking into account existing legislative obligations, including training of all workers on health and safety rules at the workplace;
- voluntary health promotion including, for example, awareness-raising actions;
- knowledge-building of management at the appropriate levels in order to address challenges and possible solutions in this field;
- health and safety measures taking account of the physical and psychological health of workers;
- review of health and safety measures between management and health and safety representatives, in accordance with existing legislative requirements (ETUC *et al.* 2017).

As well as health and safety issues, adapting work organisation to meet the needs of companies and workers is also a key area for social dialogue. To promote active ageing, it is also important to foster active and productive work throughout working life. This can be done particularly effectively by identifying any possible improvements at company level in terms of task allocation. Among possible actions to be taken, the framework agreement identifies the following:

- fostering the capacity of both young and older workers to better anticipate and adapt to changes in work organisation;
- working arrangements, including with regard to working time;
- adapting allocation of tasks between workers;
- providing necessary means to managers on age-related issues;
- fighting stereotypes related to age, for example by establishing mixed-age teams;
- transition measures for older workers towards the end of their working life;
- recruitment of new staff (ETUC *et al.* 2017).

Another important set of measures proposed in the framework agreement concerns support for skills development and life-long learning, aimed at fostering workers' employability and optimising enterprises' human capital in terms of competences and know-how. The framework agreement recalls that social partners have the role of facilitating the fair access of all workers, regardless of age, to a sufficiently broad offer of training, according to national practices and procedures, whilst all workers should be encouraged to participate in such training. Here again, the agreement emphasises various potential measures and actions:

- awareness-raising towards management and workers' representatives of skills needs in an age perspective;
- training for workers of all ages, aiming to maintain and further develop necessary knowledge and competence;

- facilitate and support personal career development and mobility;
- motivate and increase participation in training to ensure up-to-date skills, in particular digital skills;
- embedding age management into broader skills development;
- identifying formal and informal competences that workers have acquired in the course of their working life (ETUC *et al.* 2017).

Finally, the framework agreement underlines the need for an inter-generational approach, promoting solidarity between all workers, who are to be valued according to their abilities, skills and knowledge, irrespective of age. Again, a number of potential measures are identified:

- distributing tasks according to ability/skills/knowledge;
- tutoring/mentoring/coaching schemes to welcome and introduce younger workers to their working environment, including paths to allow them to fulfil their potential;
- knowledge/skills transfer programmes, both younger towards older and older towards younger workers;
- the creation of knowledge banks to capture specific knowhow and professional intelligence developed in-house and pass it on to newcomers;
- awareness-raising on the importance of being age-positive, and promotion of age diversity, including considering different possibilities regarding the balance between ages within teams;
- collaboration with education institutions or public employment services to ease transitions into and within the labour market (ETUC *et al.* 2017).

The framework agreement must be implemented within three years of the date of its signing, i.e. by December 2019. The European Trade Union Confederation (ETUC) insisted that the agreement should be binding on the member organisations of the signing parties. This more binding nature was the main stumbling block during negotiations, as employers were against it. However, one of the well-known problems with previous European framework agreements was their low level of implementation by Member States (Pochet and Degryse 2016; Degryse *et al.* 2011). The agreement therefore states that, in the context of Article 155 of the TFEU, this autonomous European framework agreement commits the signatories to promote and to implement tools and measures, where necessary at national, sectoral and/or company levels, in accordance with the procedures and practices specific to management and labour in the Member States and in the countries of the European Economic Area. In line with the terms of the framework agreement, member organisations will report on implementation of the agreement to the Social Dialogue Committee⁶. During the first three years after the date of signature of this agreement, the Social Dialogue Committee will prepare a yearly table summarising the on-going implementation of the agreement. A full report on the implementation actions taken will be prepared by the Social Dialogue Committee and adopted by the European social partners during the fourth year. In the case of no reporting and/or implementation after four years and after evaluation in the Social Dialogue Committee, the European social partners will engage in joint actions together with the national

6. <http://ec.europa.eu/social/main.jsp?catId=479&langId=enfr>

social partners of the countries concerned in order to identify the best way forward in implementing this framework agreement in the national context. It is still too soon to know how the actions set out in this agreement will be implemented, but this agreement could be the last of its kind, at least at cross-industry level, if it turns out to be ineffective (Pochet and Degryse 2016).

4. Actions taken by Member States

This section is based mainly on an analysis of the active ageing-related reforms described in the report drawn up by the European Social Observatory as part of a European research project on the situation, reforms and policies related to the ageing of the active population in the EU (Peña-Casas and Ghailani 2016)⁷.

4.1 Social protection: increasing the retirement age

Most social protection reforms of importance to older people have involved pensions. Almost all European countries have increased the retirement age, with only Poland going against the tide by reversing the thrust of a previous reform and bringing the retirement age down from 67 to 65 for men, and from 65 to 60 for women⁸. All EU countries allow people to allow people to receive both a pension and a salary, generally without any restrictions, though sometimes with limits on additional wage amounts (Belgium, Denmark, Spain and Hungary).

Various mechanisms have also been developed to encourage older workers to postpone the age at which they retire.

- Many countries have decided to phase out, or to considerably tighten the conditions for, access to early retirement (e.g. Denmark, Greece, Hungary, Poland, Slovenia, Austria, Italy).
- Other countries (e.g. Finland, Estonia, Cyprus) grant a bonus to late retirees, or restrict options for partial pensions (e.g. Denmark, Germany, Spain, Italy, Croatia, Finland and Sweden).
- Invalidity or disability benefits can generally be received together with a pension, but in most countries only to a limited extent, except for a few with no restrictions thereon (Bulgaria, the Czech Republic, Lithuania, Latvia and Slovenia), or where it is not allowed (Ireland, Italy and Luxembourg).
- Several countries have specific unemployment regimes for older people (e.g. Germany, Greece, Italy, Hungary, Finland). Some countries have extended the

7. The PAWEU project ('Policies for an Aged Workforce in the EU') was financed by the European Commission (Directorate-General for Employment, Social Affairs and Inclusion). The organisations involved, under the leadership of the Fondazione Brodolini, were the European Social Observatory, the Italian social security institute (INPS) and the Romanian Ministry for Employment and Social Justice. The project analysed the situation of the older population in the EU, particularly aspects related to employability and work, as well as the reforms undertaken in the Member States to keep older people in work or find them new work.

8. <http://www.cleiss.fr/actu/2017/1702-pologne.html>

period of benefit receipt for the older unemployed, subject to certain conditions relating to age and closeness to retirement age (e.g. Ireland, Italy, Cyprus, Lithuania, Slovenia, Finland). Some countries give special benefits in the event of restructuring (e.g. Luxembourg, Germany, Belgium), or allow the older unemployed to take early retirement, subject to certain conditions (e.g. Spain, the Netherlands, Slovakia, Portugal, Poland).

- Finally, older people with insufficient resources are also, in most countries, eligible for guaranteed minimum income schemes, which are geared largely to people who are not working or who are on a low income, rather than to specific categories. Some countries also provide specific social assistance to those above retirement age. This can take the form of an old-age social pension (e.g. Bulgaria, Cyprus, Portugal, Lithuania), a supplementary allowance for older people (e.g. Belgium, France, Italy, Portugal, Slovenia), or a pension credit (United Kingdom). In recent years, however, access conditions to the various unemployment, sickness/invalidity or social assistance schemes have been tightened and availability for work stipulations stepped up for those who are (partially) fit for work (Peña-Casas and Ghailani 2016).

4.2 Labour market: activate older workers and the unemployed

Employment policies have followed the same path as social protection systems, with many reforms targeting older workers and the unemployed⁹.

These reforms explicitly geared to older people can be split into three groups: those aimed at keeping older workers in employment, those aimed at getting the older unemployed back to work, and those included in more general reforms also impacting older people.

Of the reforms adopted in the EU between 2010 and 2014 listed by Peña-Casas and Ghailani (2016), 30 directly concern older workers, 42 target the older unemployed, and 18 are more general reforms. Some countries have set up comprehensive initiatives on active ageing, including national strategies, programmes and agreements between the social partners. These agreements create the legal framework and conditions needed to facilitate longer working careers by tackling the challenges facing ageing societies. Such comprehensive reforms have been adopted, for instance, in Bulgaria, Estonia, Romania, the Czech Republic, Ireland, Portugal and Spain. Other countries (Cyprus, Finland, Hungary and Lithuania) have included initiatives to support older workers in more general approaches to labour market reform. Approaches concerning equal opportunities, life-long learning policies and broader initiatives to promote health, even those not specifically singled out as national active ageing strategies, can also be included in this general reform category. In some countries, these general approaches have emerged from country-level tripartite social dialogue or sectoral negotiations between the social partners (e.g. in Belgium, Germany, France, Finland, Denmark and Ireland).

9. This analysis is based on the European Commission's database on labour market reform (LABREF), which provides a detailed overview of the reforms adopted in recent years (2010-2014). <https://webgate.ec.europa.eu/labref/public/>

Between 2010 and 2014, several reforms directly targeted older workers. Most were in the field of active labour market policies, particularly reforms of the public employment services (e.g. Spain, Poland, Sweden, Belgium), or training policies (e.g. Germany, Poland, Luxembourg). Labour taxation reforms were also put in place, mainly in relation to social security contributions paid by employers (e.g. Belgium and Italy), or workers (e.g. Austria, Slovenia). Reforms also amended employment protection legislation, mainly the rules on collective dismissals (e.g. Belgium, Luxembourg and Spain), or the definition of fair dismissal (Bulgaria). Other reforms concerned the field of social benefits, particularly in Austria and the United Kingdom.

Many reforms were specifically aimed at helping the older unemployed to return to work. These focused mainly on active labour market policies, using hiring subsidies for companies taking on older unemployed people (e.g. Austria, Slovenia, Latvia, Portugal, Romania, Belgium, the Netherlands, Spain, France), reforms of the public employment services to establish more targeted and suited activation services (e.g. Belgium, the Netherlands, France, Romania), or direct job creation (e.g. Greece, Slovakia, Bulgaria). Other reforms directly targeted unemployment regimes, making eligibility dependent on activation procedures (Spain, Belgium), or extending the period during which older unemployed people receive benefits (Slovenia, Spain).

It is difficult to assess the specific impact of these reforms as this involves evaluating the incentives for older workers to remain active as long as possible or to return to work quickly. Granting subsidies to companies for recruiting older unemployed workers, and introducing or tightening activation measures for this category, are two of the main types of reform adopted. Studies have recently examined the relative effectiveness of these measures. Subsidising the employment of older unemployed people tends to result in displacement of non-subsidised employment (windfall and displacement effects), generating very limited increases in the overall employment of older people, although such measures can have a more positive effect on getting older women back to work, at least in certain regions (Boockmann 2015). Similarly, empirical data on the activation of older unemployed suggests that eliminating or raising the age of exemption from the obligation to actively seek employment does help to get more older unemployed people back to work, but only where there is also a good follow-up process, as well as sanctions to guarantee the effectiveness of these measures (Bloemen 2016; Lammers *et al.* 2013). Here again, the quality of the follow-up is crucial, and depends, in particular, on the means used. Empirical data also shows that the withdrawal of exemptions often has a negative effect, resulting in more people becoming inactive or claiming disability support. Moreover, active job search requirements do not really work for the older long-term unemployed, particularly if they are low-skilled. Finally, as with all unemployed workers, the imposition of active job search requirements has no impact on labour market restrictions due to structural weaknesses and/or discriminatory behaviour by employers vis-a-vis older unemployed (Lammers *et al.* 2013).

Increasing employment rates among older people is also supposed to help finance social protection, especially by reducing the growing burden of pensions in overall social expenditure in the EU Member States. However, a recent report (European Commission

2016) suggests that a 10% increase in the employment rate for older workers (aged 55-64) over the period 2013-2060 would have only a very minor impact on state pension expenditure, ranging from -1 % of gross national product (GNP) in Belgium to -0.1 % in Spain and Greece. In several countries, the effect would even be to increase pension spending, particularly in France (+0.7 % of GNP), but also in Estonia, Latvia, the Czech Republic, Finland and Italy. This would be due to the interaction of two contradictory effects. On one hand, a reduction in the inactive population would lead to a rise in gross national product, a reduction in the number of pensioners and the creation of further drawing rights. On the other hand, longer working lives would also imply the acquisition of higher pension rights, resulting in supplementary pension expenditure (European Commission 2016: 100).

If it is difficult to measure the impact of the reforms undertaken by European countries to encourage older people to stay in employment and to foster labour market participation, it is just as tricky to assess how the European and national levels interact in this area. As explained in Section 2, there are strong European incentives in the field of active ageing, both legally binding (Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation) and non-binding (the Lisbon Strategy quantified targets). Yet it is difficult to establish the extent to which national reforms are the result of this influence from Europe, rather than responding above all to specific national needs. The Member States currently most effective in terms of active ageing, such as the Scandinavian countries or Germany, carried out reforms well before the beginning of the millennium and the introduction of binding and non-binding European incentives. Ageing-related issues, particularly the financial sustainability of pension and health systems, have certainly motivated countries to adopt reforms to increase employment among the older population and to postpone retirement. While the urgency of the ageing challenge varies between EU Member States, the challenge itself is still one they share. In this context, countries are bound to feel encouraged to carry out reforms, particularly with increasing pressure for budgetary rectitude coming from the new economic governance expressed in the European Semester and the Stability and Growth Pact (Fabbrini 2016).

Conclusions

European societies are confronted with population ageing, with all its economic and social consequences. Demographic changes exert strong pressure on social protection resources: increased expenditure means that social protection is torn between maintaining adequate provision and ensuring financial sustainability of the social systems. The older active population is a varied group, the size of which varies between the EU countries, but which will inevitably see relative growth across-the-board in the years to come. The situation within the EU ranges from severe demographic pressure in some countries (e.g. Germany, Italy, Finland, France, Belgium and Sweden), to milder pressure, at least in the short and medium term, elsewhere (e.g. Spain, Ireland, Poland and Romania).

While the demographic challenge of population ageing is a subject of concern for all EU countries, the extent of the political action taken and of demographic pressure have varied between Member States. The political response to ageing issues depends above all on the desire and ability of European societies and of the EU to go beyond a short-term vision focused on increasing employment rates and reducing older unemployment, and on raising the retirement age. The analytical framework for active ageing highlights that this is a complex and multi-dimensional issue, requiring in-depth action in key policy fields and in a long-term perspective (WHO 2002; Walker and Maltby 2012). This is particularly necessary in our globalised world. All actors are affected by this development and have a role to play: EU and Member State institutions, but also the social partners and civil society. The current situation of older people on the labour market and more broadly in society shows that vast and decisive investment is needed in areas such as equal opportunities, life-long learning, health, and more generally to tackle the economic and social inequalities which have grown within the EU.

Radical changes are also needed in the way in which the labour markets now function in Europe, including for older people. The current disparities faced by active older people must be smoothed out, and investments must take place so that younger members of society can also better envisage working longer, while preserving their healthy life expectancy and encouraging sustainable transitions right from their entry onto the labour market. To achieve this, work organisation should gradually be modified, and consideration should clearly be given to models different to those currently in place, the limitations of which have become clear. The current political approach, based on a limited and damaging vision (any job at any cost) should gradually be abandoned, so that employment and work can be seen in a longer-term perspective, that of the individual's working life. As is emphasised by the United Nations and the International Labour Organization (ILO), and taken up by Eurofound, efforts should be made to help bring about a progressive shift towards sustainable work throughout the life course (Eurofound 2016 and 2012).

It is important, therefore, to improve the quality of employment and work for older workers, by adapting their workplaces but also by changing the way work is organised, particularly by reducing their working time. This would allow them to carry on working, and to better fit work with family commitments, in terms of caring for dependents. There must also be a radical reduction, over the working life, in the physical and mental health risks to which workers are exposed. This should help ensure a gradual transition to retirement and inactivity, as late as possible and with the least possible upset. These are the main ideas set out in the 2016 framework agreement on active ageing drawn up by the European social partners. What is more, the recent European Commission proposal for a European Pillar of Social Rights (EPSR) takes the same approach¹⁰, as do the binding and non-binding initiatives which accompany it, particularly the proposals for a communication on interpretation of the 2003 working time directive, for a work-life balance directive, and the consultation of the social partners on access to social protection (European Commission 2017a, 2017b and 2017c). The various aspects which

10. See also the chapter by Sabato and Vanhercke on the EPSR in this volume.

make up quality of employment and occupation are the backbone of the EPSR, and should therefore be understood as fundamental social rights for all Europeans. Let us hope that the Commission's stated aim to make these social rights more 'effective' will become reality for all EU citizens, including older members of society (AGE 2016).

As things currently stand, one fundamental right of all older citizens, the right to non-discrimination in work and employment, is disregarded in many Member States. Sustained efforts will still be required from the social partners and the European and national institutions to create a truly positive 'culture' of active ageing and non-discriminatory recruitment. For if there is one point on which policies geared to offering financial incentives to employers fall short, it is the issue of discrimination.

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Annex 1

Guiding principles for active ageing and solidarity between generations

(1) Employment

1. *Continuing vocational education and training*: Offer women and men of all ages access to, and participation in, education, training and skills development allowing them (re-)entry into and to fully participate in the labour market in quality jobs.
2. *Healthy working conditions*: Promote working conditions and work environments that maintain workers' health and well-being, thereby ensuring workers' life-long employability.
3. *Age management strategies*: Adapt careers and working conditions to the changing needs of workers as they age, thereby avoiding early retirement.
4. *Employment services for older workers*: Provide counselling, placement, reintegration support to older workers who wish to remain on the labour market.
5. *Prevent age discrimination*: Ensure equal rights for older workers in the labour market, refraining from using age as a decisive criterion for assessing whether a worker is fit for a certain job or not; prevent negative age-related stereotypes and discriminatory attitudes towards older workers at the work place; highlight the contribution older workers make.
6. *Employment-friendly tax/benefit systems*: Review tax and benefit systems to ensure that work pays for older workers, while ensuring an adequate level of benefits.
7. *Transfer of experience*: Capitalise on older workers' knowledge and skills through mentoring and age-diverse teams.
8. *Reconciliation of work and care*: Adapt working conditions and offer leave arrangements suitable for women and men, allowing them as informal carers to remain in employment or return to the labour market.

(2) Participation in society

9. *Income security*: Put in place systems that provide adequate incomes in old age, preserving the financial autonomy of older people and enabling them to live in dignity.
10. *Social inclusion*: Fight social exclusion and isolation of older people by offering them equal opportunities to participate in society through cultural, political and social activities.

11. *Senior volunteering*: Create a better environment for volunteer activities of older people and remove existing obstacles so that older people can contribute to society by making use of their competences, skills and experience.

12. *Life-long learning*: Provide older people with learning opportunities, notably in areas such as information and communication technologies (ICT), self-care and personal finance, empowering them to participate actively in society and to take charge of their own life.

13. *Participation in decision making*: keep older women and men involved in decision making, particularly in the areas that directly affect them.

14. *Support for informal carers*: Make professional support and training available to informal carers; ensure respite care and adequate social protection to prevent social exclusion of carers.

(3) Independent living

15. *Health promotion and disease prevention*: Take measures to maximise healthy life years for women and men and reduce the risk of dependency through the implementation of health promotion and disease prevention. Provide opportunities for physical and mental activity adapted to the capacities of older people.

16. *Adapted housing and services*: Adapt housing and provide services that allow older people with health impairments to live with the highest possible degree of autonomy.

17. *Accessible and affordable transport*: Adapt transport systems to make them accessible, affordable, safe and secure for older people, allowing them to stay autonomous and participate actively in society.

18. *Age-friendly environments and goods and services*: Adapt local environments as well as goods and services so that they are suitable for people of all ages (design-for-all approach), in particular by making use of new technologies, including eHealth; prevent age discrimination in the access to goods and services.

19. *Maximising autonomy in long-term care*: For people in need of help/care, ensure that their autonomy and participation are augmented, preserved or restored to the greatest possible extent and that they are treated with dignity and compassion.

Source: European Council (2012).

Conclusions

Social policy in the EU: high hopes but low yields

Bart Vanhercke, Sebastiano Sabato and Denis Bouget

Introduction

The European Union's (EU) multiple crises – starting in the financial markets, spreading to the economy and social and political institutions – have put the European construction under unprecedented pressure. They also put a question-mark over the EU's policies and indeed the legitimacy of its institutions to provide answers addressing citizens' concrete concerns. As a consequence, support of anti-European parties and movements has grown, as seen in Germany where the *Alternative für Deutschland* (AfD) gained a considerable share of votes (12.6%) during the last Federal elections, thus putting the country's governability at risk. Furthermore, a lack of solidarity – one of the constitutive elements of the European project – among the EU Member States has gained ground over the last years. After decades of bumpy but continuous progress towards an 'ever closer' and wider Union, the EU is now faced with the prospect of disintegration. In addition, for the first time in its history, the EU is no longer the 'convergence machine' it used to be. Quite the contrary, increasingly divergent trends have emerged between Northern and Western (creditors), Southern (debtors) and Central-Eastern countries (Vandenbroucke *et al.* 2014). The Eurozone has been under particular pressure, with the concrete risk of disintegration exemplified by the 2009 Greek crisis and the near-'Grexit' from the common currency. The badly handled socio-economic Greek crisis turned populations against the EU and enhanced the EU's legitimacy crisis while spurring proposals to split the Eurozone and set up a new monetary system for the Southern countries (Natali 2014).

According to many observers, the EU's response to the multiple crises has been inadequate, with counter-productive policies being implemented and recourse taken to what has been dubbed as 'balanced budget fundamentalism' (De Grauwe 2011) or 'austeritarianism' (Hyman 2015). More generally, the EU has failed to rebalance the social and economic dimensions of its governance, while fiscal consolidation measures have put the so-called European Social Model under strain, even to the point of it being famously declared dead by the President of the European Central Bank Mario Draghi¹. Such an extreme stance exemplifies the views of certain political and especially economic players who consider social policies as a burden to growth and competitiveness.

1. Europe's Banker Talks Tough. Draghi Says Continent's Social Model Is 'Gone,' Won't Backtrack on Austerity, *Wall Street Journal*, February 24, 2012.

While the EU showed its ‘econocratic face’ (Ferrera 2017) during the first cycles of the European Semester (2011-2014) at the expense of more socially-oriented stances, some observers have pointed to a progressive, though still incomplete, ‘socialization’ of the Semester (Zeitlin and Vanhercke 2017): social players’ ability to influence the process has indeed been growing over the period 2011-2016. As a result, social issues have been moved up the political agenda, as exemplified by the fact that a relatively high number of Country-specific Recommendations concerning social policy in general (Bekker 2015)² and poverty and social exclusion in particular (Urquijo 2017) have been adopted³. However, while recognising that structural reforms have served to put pressure on the Member States to proceed simultaneously with social retrenchment and social investment policies, Crespy and Schmidt (this volume) note that the relative increase in the number of social investment-oriented Country-specific Recommendations (CSR) may simply indicate that CSRs referring to fiscal consolidation have been implemented by the Member States while social investment-oriented reforms lag behind.

This said, since 2013, the economic situation in EU countries has slightly improved. Looking at GDP trends (Eurostat 2017a), all countries except Greece experienced (more or less) marked growth in 2016 compared to the previous year. Looking at the employment rate, we see a decrease (EU 28) between 2008 (70.1%) and 2013 (68.4%) (Eurostat 2017b), followed by a recovery between 2013 and 2016 (71.1%), with the rate now higher than in 2008. In the Eurozone, we see a similar curve: 70.2% in 2008, 67.7% in 2013 and a quasi-recovery in 2016 (70.0%) (ibid.), though major differences exist between the Member States. Nonetheless, the positive GDP and employment rate (as well as the unemployment rate) trends have been only partially matched by significant improvements in other social indicators, where the recovery is manifesting itself more slowly.

Indeed, in the EU 28, 23.7% of the population were at risk of poverty or social exclusion (AROPE) in 2010, with a peak of 24.7% in 2012 (Eurostat 2017c). Data for 2015 shows the AROPE rate (EU 28) at 23.8% (i.e. close to 2010 values). Here again, the situation differs greatly among the Member States, ranging from 41.3% in Bulgaria and 37.4% in Romania, to 14% in the Czech Republic and 16.0% in Sweden. Equally worrisome trends emerge when looking at youth unemployment (15-29 years-old), which (EU 28) increased from 11.7% in 2008 to 18.4% in 2013 (Eurostat 2017d). Though it has significantly decreased since then (14.3% in 2016), it remains significantly higher than in 2008. This development has been particularly marked in the Eurozone, where youth unemployment rose from 12.0% (2008) to 19.5% (2013), remaining at a still high level (16.4%) in 2016. Again, marked country variations exist, with the rate ranging from (2016 data) 38.3% in Greece and 32.7% in Spain to 5.6% in Germany and 7.2% in Malta. All in all, while jobs are being created, work does not prevent people from falling into poverty: in 2015 in-work at risk of poverty affected 9.5 % of the EU 28 population (8.3% in 2010), ranging from 18.8% in Romania to 3.5% in Finland (Eurostat 2017e). It should be noted that, even in such a rich country as Germany, people at risk of in-work poverty represented (in 2005) 9.7% of the population (6.8% in 2009).

2. For a different view, see Crespy and Menz (2015), de la Porte and Heins (2015).

3. For an analysis of the evolution of the CSRs between 2011 and 2017, see Clauwaert (2017).

Against this socio-economic backdrop, and taking into account the chapters of the present volume, we first look at the key ‘high politics’ events characterising the EU in 2016: notably Brexit and the refugee crisis. We reflect on the implications these events have in terms of further EU integration, disintegration and/or differentiated integration. These formidable challenges notwithstanding, the EU has obviously continued to work during the past year. Consequently, we go on to discuss some of the most significant social policy initiatives undertaken in 2016: all in all, the year seems to have been characterised by mounting expectations in the social domain – mainly as a result of the public consultation around the European Pillar of Social Rights – but low concrete delivery in terms of EU initiatives, despite the initial Pillar proposal. In other words: high hopes have been created at last, but results are still not up to scratch. We end by reflecting on the future prospects for EU social policymaking.

1. The EU between disintegration, differentiated integration and further integration

It is impossible to address the developments in EU politics in 2016 without starting from the major political event of that year, i.e. the Brexit vote. The results of the referendum called by former UK Prime Minister David Cameron (23 June 2016) were a veritable shock for the whole EU, and beyond. For the first time in its history, the Union is set to lose one of its Member States. But what were the causes of the ‘leave’ vote and what could be the consequences for the remaining Member States? Daniel Clegg (this volume) convincingly explains that the leave vote took place in a healthy economic situation, with employment in the UK at record levels. Yet, in a labour market characterised by deregulation, pushed activation and the application of the principle of making work pay to its limits, this did not prove enough. Indeed, the benefits of growth and employment were not fully enjoyed by everybody. Clegg notes widespread discontent with the socio-economic *status quo*, with many people feeling themselves ‘left behind’, experiencing diffuse vulnerability and insecurity. This was an important factor in the UK vote. The EU should learn lessons from Brexit. The rise of anti-establishment sentiment across Europe calls for a stronger social dimension to European integration. Clegg calls for a departure from the EU agendas of activation and making work pay, complementing the objective of employment promotion with other kinds of objectives such as job quality. Otherwise, the author concludes, the risks of Brexit contagion could become a reality. *Is the EU ready for this kind of paradigm shift? Does Brexit automatically mean that the 27 will now advance more swiftly towards further integration, also in social policy?* The latter question is naïve and such a scenario seems unlikely: while it is true that the UK has often blocked progress in EU social policy (or opted out), other Member States have adopted a free-riding attitude, hiding their positions behind the UK. These obstacles remain, even after Brexit.

Brexit was not the only factor shaking the EU in 2016. During the past year, the long-lasting refugee crisis worsened. Confronted with this challenge, the European Union took some initiatives, mainly focused on preventing the arrival of refugees and outsourcing the management of asylum seekers and refugees. Yet, as explained by Dalila Ghailani (this volume), those initiatives showed a lack of solidarity between the Member States

and a worrisome tendency to prioritise security concerns at the expense of immigrants' (human) rights. For instance, the refugee resettlement programme proposed by the European Commission in 2015 simply failed, with some Member States – especially Central-Eastern countries – refusing to share responsibility for asylum seekers within the EU. This left the burden on the countries of arrival such as Greece and Italy and on other, more willing, Member States. Furthermore, EU and Member State initiatives were not only largely ineffective but also threatened refugees' rights. For instance, Ghailani refers to the 'hotspots' solution adopted with a view to relieving the pressure on Greece and Italy. This solution led to the adoption of repressive measures contravening human rights and to increasingly inhuman living conditions, leaving asylum seekers with a sense of injustice, discrimination and despair. On the other hand, the EU-Turkey agreement of March 2016 confirmed the outsourcing approach to asylum policy. This agreement sparked strong reactions from many human rights organisations and still raises questions as to the respect of fundamental rights: reports have been made about illegal detentions, violations of the non-refoulement principle, arbitrary arrests and ill-treatment.

The question is: *what are the possible consequences of these crises in terms of EU dis-integration or further integration and what is the best way forward?* Alas, there is no clear-cut answer, with both risks and opportunities arising. On the one hand, effectively responding to these challenges would require a quantum leap in terms of further integration (e.g. a common asylum policy). On the other hand, however, further integration is blocked by marked divisions among Member States over what should be done.

The EU therefore seems squeezed between the prospect of very difficult (given the current political climate) further integration and an inauspicious process of disintegration. *Or are there options to get out of the present impasse?* In the previous edition of *Social policy in the European Union: state of play 2016*, Sergio Fabbrini (2016) proposed two strategies: policy differentiation and constitutional differentiation. Policy differentiation envisages an EU made up of different clusters of Member States participating permanently in different policy regimes with varying degrees of integration (without modifying the existent legal and institutional order). Constitutional differentiation by contrast would constitute a step towards a political union, implying a more clear-cut differentiation between Eurozone and non-Eurozone countries and connecting them through the Single Market. This second strategy would however require Treaty changes.

Contributing to this debate about the future of Europe, Mario Telò (this volume) proposes a 'multi-speed Europe' as the only viable solution for progressing towards a more effective and legitimated EU, able to cope with the global challenges confronting the world today. According to the author, the only way out of the current *impasse* is indeed a politico-institutional process where a political *avant-garde* of countries, a 'core group', would advance towards further integration. Echoing Telò's position, Crespy and Schmidt (this volume) conclude that there is a good chance that further integration for the EU-27 will mean more differentiation, with the EU best conceived as a region-state made up of a soft core of overlapping clusters of Member States in the EU's many policy communities. This will require, the authors continue, a distinction to be made between different types of policies. When it comes to EU social policy, a first step towards such

a pattern of differentiated integration is reflected in the 2016 preliminary outline of the European Pillar of Social Rights (EPSR), arguably the key EU initiative in the social domain of the past few years. Indeed, the Pillar, the draft of which was submitted to a wide consultation in 2016 (Sabato and Vanhercke, this volume), primarily concerns Eurozone Member States but is open to non-Eurozone countries.

Both the strategies of further integration and differentiated integration would require the formation of strong coalitions supporting them. *But who are the potential players pushing for these outcomes?* Besides politico-institutional actors at both EU and national levels, Mario Telò identifies trade unions as key players in the process, potentially able to influence EU policy proposals responding to the increasing insecurity of most citizens of the Union, thereby enhancing the EU's legitimacy. *But are trade unions willing to play such a role?* The answer is complex and unions' attitudes towards EU macro-economic governance are a good example thereof. Between 2011 and 2016 there has been some improvement in social partner involvement in the European Semester (cf. Sabato *et al.* 2017). Yet, a 'clash of expectations' between trade unions and EU political actors seems to be in the making. Indeed, the European Commission seems willing to listen to trade unions – using the information they provide to prepare key European Semester documents and thereby gaining a more detailed idea of the situation on the ground – and to involve them in the implementation of the Country-specific Recommendations. Trade unions are however unwilling to participate in implementing these policies, unless they are involved in the agenda-setting and in decisions concerning overall (economic) policy orientations (still deemed too austerity-oriented).

Boosting trade union involvement in policymaking is further complicated by the fact that European social dialogue has been experiencing considerable difficulties (cf. Degryse and Clauwaert 2012), and national social dialogue is under strain in most countries. Will Commission President Juncker, the self-proclaimed 'President of social dialogue', be able to relaunch the process so that social partners can again engage in real negotiations? The relaunch of European social dialogue seems indeed a priority for the European Commission which, in March 2015, held a high-level conference on 'A new start for social dialogue' (European Commission 2015), resulting in a Joint Statement by the Dutch Presidency of the Council, the European Commission and the European Social Partners (Dutch Presidency *et al.* 2016). Even beyond social dialogue, however, the positions of employers' and workers' representatives are far apart on a number of issues, including, crucially, their appreciation of the EPSR, the implementation of which is dependent on social partner willingness. Thus, the opinions of the social partners differ greatly when it comes to the level of ambition and the scope of the Pillar, the contents of benchmarking exercises, the implementation tools and the links with the Better Regulation agenda.

2. EU social policymaking in 2016

Though some scholars (Zeitlin and Vanhercke 2017) have pointed to a progressive socialisation of the EU's macro-economic governance (i.e. the European Semester), the process still appears unbalanced, with greater weight given to economic and fiscal

objectives than to social concerns. Amandine Crespy and Vivien Schmidt (this volume) recognise that since the end of 2014 the Juncker Commission has sought to address the criticism of the excessive focus on economic austerity by promoting investment and allowing for greater flexibility in the enforcement of fiscal discipline⁴. Yet, the focus is still on structural reforms, with strong attention paid to labour market deregulation, while the promotion of social investment has remained weak and de facto constrained by the prevailing orthodox conception of competitiveness.

A further way of socializing the European Semester would be to better include other social players, in particular the social partners. We already discussed the tensions arising over the direction of policies adopted through the Semester and the current state of the European social dialogue. This said, European social dialogue is not the only process through which the social partners interact at EU level. Another important forum for discussing and taking decisions is sectoral social dialogue. Christophe Degryse (this volume) discusses the lack of progress on the issue of work-life balance, stalled due to employers' refusal to negotiate. More positive developments in sectoral social dialogue concerned measures for older workers and the digitalisation of the economy, with the latter considered the key topic for the future.

Will the European Pillar of Social Rights outlined in 2016 contribute to rebalancing the EU's economic and social priorities? The EPSR represents a social policy framework with the potential to guide EU actions in the social domain in the next decade and, hopefully, to promote 'upward social convergence' among Member States. While it is obviously too early to assess the effectiveness of the EPSR, one wonders which criteria would be used for such an assessment. In other words, *what is the Pillar a social policy framework for?*

First, the future Pillar can be of use in re-launching EU initiatives in the social domain. Yet, an ambiguity emerges from the debate on the European Pillar – crafted as a solemnly proclaimed but non-binding instrument – concerning the policy instruments through which it will be implemented. The most likely scenario is that both 'hard' legislation and 'soft' governance instruments will be used, reflecting the varying legal EU competences in the social domain. As for concrete initiatives, some proposals have already been put forward by the European Commission in the 'Pillar package', such as the Work-Life Balance Directive, a first-stage consultation of the European social partners on the Written Statement Directive, an interpretative Communication and Staff Working Document on the Working Time Directive, and a consultation of social partners on access to social protection for all (including workers in non-standard employment and the self-employed). *But will this be sufficient to re-launch an ambitious EU social agenda promoting upward convergence?* Based on the evidence presented in this book, it is high time to be more ambitious, putting forward new proposals and revising old ones (see Section 3 below).

The second criterion for assessing the possible effectiveness of the EPSR framework is the extent to which it will be able to influence Member State policies. This should be

4. This flexibility appears in a new monetary context of 'quantitative easing' of the European Central Bank.

done through integrating it into the procedures of the European Semester. However, the concrete arrangements for integrating the Pillar into the overall EU socio-economic framework are still vague and very limited, mainly because of the high risk of failure due to the principle of subsidiarity in the social protection domain.

A final but very important criterion for assessing the future Pillar's effectiveness is the extent to which Pillar principles will be taken into account by economically-oriented players in their policy choices, starting with the social scoreboard accompanying the EPSR. In other words, will the EPSR succeed where the previous EU social policy framework – the Social Investment Package – failed (cf. Ferrera 2017; Sabato 2016)?

The EPSR has at least the potential to mark a quantum leap in EU social policymaking. First, the preliminary outline of the Pillar has transformed the (social) values and objectives of the Treaties into concrete 'principles'. The final version of the EPSR has framed these principles in terms of 'rights for European citizens'. This is however not sufficient. Indeed, in order to make the Pillar effective, a further step is needed: turning the rights stated on paper into effective and enforceable rights, guiding action at both the EU and Member State levels and ensuring that every European citizen has access to them.

In this context, work-life balance clearly figures high on the agenda of the European Commission which, as part of the European Pillar of Social Rights, presented a policy package on the topic in April 2017. The fate of the initiative is however uncertain, due to the doubts of a number of Member States and strong employer opposition. Nevertheless, the Commission intends to go ahead. As stated by Commissioner Marianne Thyssen in an interview with *Le Soir* (26 April 2017), the Commission will present its proposals on parental leave, despite opposition from BusinessEurope. *Is this a first sign of a renewed activism on the part of the European Commission, spurred by the adoption of the European Pillar of Social Rights?* As shown by Denis Bouget, Chiara Saraceno and Slavina Spasova (this volume), the issue of work-life balance is highly complex, with a remarkable variation in the situations and initiatives undertaken across the Member States. Somewhat worrisome, one common trait in the work-life balance policies in favour of people caring for dependent family members (a child or an adult with disabilities, or a dependent elderly person) adopted in the various Member States is that reforms are leading to the emergence of precarious working conditions for the caregivers. Furthermore, the focus of the EU policy discourse in this field is exclusively on caregivers in employment: no account is taken of the needs of caregivers outside the labour market.

Another domain where some progress can be seen concerns measures targeting older workers, a topic that, since the early 1990s, has been on the political agenda of most Member States. As flagged by Ramón Peña-Casas (this volume), the main development at European level is the Framework Agreement on Active Ageing and an Inter-Generational Approach concluded by the social partners in December 2016. Its purpose is to promote information and exchange of practices aimed at maintaining good working conditions throughout working life and at enabling people to work until the statutory retirement age (and beyond), in good health.

More contentious developments concern healthcare, a sector in which the European Union is showing a growing interest and involvement, including through the European Semester. In this volume, Rita Baeten addresses the issue of the regulation of healthcare providers, where the European Commission has taken major initiatives in 2016, also in an attempt to address the limits of the 2014 Service Directive. Strikingly, however, while the Service Directive provoked strong discussions, the new initiatives are somehow below the radar of key stakeholders. In particular, Baeten discusses three recent developments. First, as part of the roadmap set out in the Single Market Strategy, the European Commission launched its ‘Services Package’ with several proposals aimed at simplifying procedures for service providers and subjecting regulation in the service sectors to EU scrutiny. Second, the European Committee for Standardisation, one of the three European standardisation organisations, has established a Healthcare Services Focus Group to come up with (contested) proposals on an overall approach and methodology towards standardisation in the area of healthcare services. Third, there is a worrying link between the 2016 initiatives for removing obstacles to trade in services and recent developments in external trade policies, where the EU is negotiating a series of multilateral and bilateral trade agreements with a very broad focus on services, investment, government procurement, intellectual property rights and regulatory cooperation.

3. Looking forward: moving to high hopes *and* high yields

Our contention is that 2016 was characterised by mounting expectations but low actual delivery (the draft EPSR notwithstanding) in the social domain. Despite high hopes, yields were low, with burning problems – including Brexit, three years of the refugee crisis and the unbalanced EU socio-economic governance – remaining unresolved and even backfiring.

However, these challenges (in particular the Brexit shock) have led to an increased awareness of the unsustainability of the status quo and to high-level debates and reflections on the future of the Union (also spurred by the sixtieth anniversary of the Treaty of Rome). Indeed, in 2017, decisive documents and declarations have been published. To start with, the *Rome Declaration* was drafted in the wake of the Rome summit (European Council 2017)⁵. Second, the *White Paper on the Future of Europe* (European Commission 2017a) sets forth five possible scenarios for the future development of the EU up to 2025⁶. In between, the European Commission proposes a solution close to the ‘differentiation’ sketched by Fabbrini (2016), envisaging ‘coalitions of the willing’ – starting from the Eurozone Member States – reinforcing their cooperation in specific policy areas. The EU27 would then be connected through the Single Market and the four freedoms. These different perspectives have been further developed in specific reflection papers: on the social dimension of the EU, on harnessing

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5. Putting forward an agenda for a future based on four main aspects: (a) a safe and secure Europe; (b) a prosperous and sustainable Europe; (c) a social Europe; and (d) a stronger Europe on the global scene.
 6. Ranging from a minimalistic scenario (‘nothing but the Single Market’) to a more ambitious one, where the EU would do much together with its 27 Member States in more policy areas.

globalisation, on the deepening of the EMU, on the future of European defence and on the future of EU finances.

What is the weight of social policy in this debate? ‘Social Europe’ is among the key points of the Rome agenda while the Commission White Paper refers to further cooperation among groups of countries on ‘social matters’. The possible future developments for social Europe, however, are defined in the *Reflection Paper on the Social Dimension of Europe* published by the European Commission (2017b) in April 2017. Referring to the scenarios identified in the White Paper, the Commission proposes three options, ranging from the EU withdrawing from social policy (except aspects related to the Single Market), via further progress limited to the Eurozone Member States, to progress in selected social policy areas for the 27. In his *State of the Union* speech (European Commission 2017c), Commission President Jean-Claude Juncker expressed his intention to work for ‘a European Social Standards Union in which we have a common understanding of what is socially fair’ (a relatively new notion for the European Commission).

Interestingly, social policies have also been taken into account in the *Reflection Paper on the Deepening of the Economic and Monetary Union* (European Commission 2017d), which, besides discussing the opportunity of a European Unemployment Reinsurance Scheme, envisages a process of convergence towards ‘minimum social standards’ as identified in the European Pillar of Social Rights. However, the reference to such standards seems at odds with the Pillar’s ambition of ‘upward convergence’ among the Member States and will probably not suffice in rebalancing EU economic and social objectives. *What concrete initiatives, in addition to the recent agreement to reform the Posting of Workers Directive, can be envisaged to move social Europe forward? We suggest five concrete steps.*

3.1 A renewed commitment to inclusive growth and to fighting poverty and social exclusion

The EU has not made much progress towards achieving its Europe 2020 poverty and social exclusion target of lifting at least 20 million people out of poverty and social exclusion by 2020. Furthermore, national targets continue to vary in their ambition and do not add to the EU collective headline target. It should be noted that the Europe 2020 social inclusion target corresponds to a decrease of around 17% in 10 years (2010–2020), whereas the target in the context of the United Nations (UN) Sustainable Development Goals (SDG) – which all EU countries have signed up to – is far more ambitious. The UN target is indeed to *reduce by at least half* the proportion of men, women and children of all ages living in poverty in all its dimensions (according to national definitions) between 2015 and 2030.

The EU should step up its commitment to fighting poverty and social exclusion by detailing how EU countries should contribute to delivering on this SDG target. This EU dimension would be very innovative, since all countries will – surprising and unacceptable as it may seem – be free to use their own national definition of the ‘poverty’ rate that will have to be halved by 2030.

3.2 Further improving the EU's economic governance

As discussed above, the effectiveness of the EU's economic governance, *inter alia* through the European Semester, has been heavily criticized, with EU-driven austerity policies blamed for their consequences on economies and people's lives. Calls for a less stringent interpretation of budgetary rules – also by leading economists and even the Belgian Central Bank (which called for more leeway in the Stability and Growth Pact (SGP) to promote public investment) – need to be taken seriously. The flexibility in interpreting the SGP rules announced by the Commission President is not enough.

The EU needs to live by its own discourse on 'social investment', possibly even encouraging Member States by organise benchmarking in this area. Future Presidencies could pick up the idea of exempting (part of) education expenditure from public deficit calculation, as a way for Europe to show its 'caring face'. Such an idea may find wider support since it is a way of improving workforce skills, thus enhancing company competitiveness.

As argued above, involving key stakeholders is fundamental to further increasing the legitimacy of the European Semester. The European Commission could scrutinise more closely how Member States involve stakeholders in elaborating their National Reform Programmes (NRP) and implementing the CSR's (e.g. organising regular peer reviews in EU committees). In addition, European Semester Officers could be scrutinised on how and when they engage with national stakeholders.

3.3 Promoting a 'European Social Union'

As argued elsewhere, the Economic and Monetary Union (EMU) needs to be complemented by a 'European Social Union' (ESU), i.e. a *Union of Member States, with their own welfare systems but supported and oriented by the EU* (Vandenbroucke *et al.* 2014). This ESU should encompass:

- A common unemployment benefit scheme for the Eurozone (cf. Fichtner 2014) and a Framework Directive on minimum income, both of which would act as automatic stabilisers and solidarity tools (cf. EESC 2013; Peña-Casas and Bouget 2014; Vandenbroucke *et al.* 2014). Since especially the latter proposal is not very popular among Member States, future Presidencies could take a first important step towards a 'European Social Standards Union' by agreeing on guidelines for such standards, e.g. regarding the criteria for assessing minimum income adequacy.
- A Skills Guarantee, proposed by the European Parliament in its report on the EPSR: 'a new right for everyone, at every stage of life, to acquire fundamental skills for the 21st century, including literacy, numeracy, digital and media literacy, critical thinking, social skills and relevant skills needed for the green and circular economy [...]'.
[...].

In an ESU it will be vital to tackle child poverty and social exclusion, also essential as an investment in Europe's future sustainability. Future Presidencies may therefore want to revisit the idea of a European child guarantee financed by the EU budget, giving

every child now living at risk of poverty access to free healthcare, education, childcare, decent housing and proper nutrition (Atkinson and Marlier 2010; S&D 2017). Offering a guarantee of living standards through an ‘EU basic income for children’ is not only about tackling child poverty – even though that is of course paramount. A second reason is that it would contribute positively not only to the Europe 2020 poverty and social exclusion target but also to other Europe 2020 headline objectives.

The risks of poverty and social exclusion among children are important in their own right, but also have implications for the future. Poverty affects not only children’s well-being at the moment when resources are insufficient, but also their capacity to develop and to build up the required capabilities, including knowledge capital, cultural capital, social capital and health capital (CERC 2004). An EU basic income for children would thus also be a social investment, contributing to the education and employment EU headline targets. It would also contribute positively to female employment, and especially the employment of single mothers. It would also concretely demonstrate to EU citizens the importance of the social dimension of the EU, thereby helping strengthen European identity. This proposal would, finally, be fully in line with the spirit of the Pillar and of course with the 2013 EU Recommendation on Investing in Children⁷.

3.4 Making an ambitious EPSR operational as of Gothenburg

The proposed EPSR should be seen in the light of the formidable social challenges highlighted above: even if there is not much legislation on the table yet – on work-life balance, on the revision of the Written Statement Directive and consultation on a future ‘social protection for all’ initiative – the Commission is at least trying to create an ambitious social agenda. The solemn and unanimous proclamation of the EPSR in Gothenburg is essential if it wants to be an instrument that has the legitimacy to guide not only future European Commissions, but also economic players (including the ECB).

It is however essential that the EPSR is accompanied by a detailed roadmap for its implementation, as there is a risk that, without Juncker, the EPSR will remain a paper tiger. It is equally essential that the principles of the Semester are vigorously mainstreamed in all other EU policy instruments, especially in EU funding: when ‘soft’ governance is matched by funding, as is the case in the EES, leverage effects can be significant.

3.5 Making social protection for all a reality

One issue of particular concern is the problematic *de facto* access of non-standard workers and the self-employed to social protection across the EU, due to increasing variety and hybridisation of labour market statuses. Hence the Commission’s recent consultation on the topic in the context of the EPSR (‘Social protection for all’ initiative). Two empirical findings support such an initiative: (a) non-standard workers (NSW) and the self-employed (SE) are in practice excluded from key social security benefits; (b) the

7. We want to thank Hugh Frazer and Eric Marlier for pointing this out to us.

at-risk-of-poverty rate of the self-employed in 2015 was three times higher than that of salaried workers (with the exception of Hungary) (Spasova *et al.* 2017).

One vital challenge faced by this initiative is the trade-off between the inclusion of several categories of non-standard workers and self-employed people in social protection and the financial impact of this on national social protection systems. Future Presidencies could try to take this initiative further by: (a) drawing lessons from Member States' positive experiences with integrating excluded labour market categories in social protection; (b) organising in-depth knowledge of the way social protection of NSW and SE is financed in the 27 Member States; (c) addressing the major data and knowledge gaps on the social protection status, labour market status and quality of work of certain of NSW and SE categories; (d) tackling some burning definitional issues (the same labels are used to describe very different work/legal/social protection realities in the MS); and (e) assessing pragmatic scenarios that would bring about more de facto inclusion of NSW/SE without having to change the entire design of certain benefits/systems.

In sum, high-level reflections developed in 2016 – and which continued throughout the first months of 2017 – represent a real window of opportunity for re-launching the process of European integration, including its social dimension, in the following years. The question is of course whether, after eight years of economic crisis, the Union still enjoys enough citizen backing to perk itself up again. We tend to be hopeful. As shown by a recent Eurobarometer (2017) survey, despite longstanding problems, a majority of Europeans (56%) are optimistic about the future of the EU – an increase of six percentage points compared to autumn 2016 – and trust in the EU continues to rise, standing at 42% (up from 36% in autumn 2016 and 32% in autumn 2015). Furthermore, 40% of Europeans still have a positive image of the EU (+5 points since autumn 2016) while 68% of Europeans feel they are citizens of the EU, the highest level ever shown by this indicator. Whether these improving figures are harbingers of a 'European Spring', as the European Commission optimistically claims from cloud nine, remains to be seen. But there is a European *demos* waiting for answers: it is time to move from high hopes to high yields.

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All links were checked on 28.11.2017.

The European Union in 2016: key events

Cécile Barbier

January

1st January: the Netherlands takes over the six-month Presidency of the Council of the European Union from Luxembourg. The four priorities of the Netherlands Presidency are: migration and security issues, innovation and employment, financial stability, and energy and climate.

1st January: Banking union. The Single Resolution Mechanism (SRM) becomes fully operational. The SRM implements the Banking Recovery and Resolution Directive (BRRD) in the euro area. The purpose of the directive, which applies throughout the Union, is to put an end to ‘bail-outs’ of banks, which had added to Member State indebtedness, IP/15/6397.

3 January: Troika/Greece. The governor of the Greek Central Bank calls on the government of Alexis Tsipras to carry out the planned reforms, particularly of the pension system, under the international bailout plan. He emphasises that failure to act would expose the Greek economy to risks with which it is not equipped to deal (<http://fr.reuters.com/article/businessNews/idFRKBNoUHoHD20160103?sp=true>).

4 January: global economic prospects. Given the growing uncertainty surrounding the intentions of the future Trump administration, the World Bank expresses pessimism as to growth prospects. According to its forecasts, global gross domestic product (GDP) should increase in 2016 by 2.7%, compared to 2.3% in 2016, but slightly down (-0.1 points) on the forecasts published in June 2015 (<http://www.worldbank.org/en/publication/global-economic-prospects>).

15 January: European Semester. The Economic and Financial Affairs Council (ECOFIN) adopts conclusions on the Annual Growth Survey (AGS) and the macroeconomic imbalances and approves a draft recommendation on the economic policies of the euro area, Press 5213/16.

21 January: Employment and social developments review. According to this European Commission report, investing in people is key to economic growth, IP/16/93.

23 January: Greek crisis. The European Stability Mechanism (ESM) announces its decision to unblock debt-relief measures for Greece, agreed upon but suspended after pressure from Germany following the surprise announcement from Athens in December of social measures (https://www.esm.europa.eu/assistance/greece#programme_timeline_for_greece and <https://www.esm.europa.eu/newsroom/press-releases>).

25 January: Schengen area. The European Commission recommends that the Council should allow certain Member States to maintain temporary controls for another three months at internal Schengen borders in Austria, Germany, Denmark, Sweden and Norway, IP/17/124.

February

2 February: attempts to prevent the United Kingdom leaving the European Union. The President of the European Council, Donald Tusk, sends a letter to the Heads of State or Government in the European Council setting out the main ideas of his proposal for reaching a new settlement with the United Kingdom within the EU. This proposal covers four baskets of issues: economic governance, competitiveness, sovereignty and social benefits and free movement (<http://www.consilium.europa.eu/en/press/press-releases/2016/02/02-letter-tusk-proposal-new-settlement-uk/>).

9 February: preparations for the anniversary of the Treaty of Rome. In view of the 60th anniversary of the signing of the Treaty of Rome on 25 March 1957, the Foreign Affairs Ministers of the EU's six founding countries (Italy, Luxembourg, Germany, Belgium, France and the Netherlands) meet in Rome on the initiative of Italy. There they begin 'an inclusive reflection process to strengthen the internal cohesion of the EU, returning to the basic principles which underpin the European integration process, while reviewing the current state of the EU and the major issues to be addressed' (http://www.esteri.it/mae/iten/sala_stampa/archivionotizie/comunicati/2016/02/joint-communicue-char_ting-the-way.html).

9 February: Europe is at a crossroads. The governors of the French and German central banks, François Villeroy de Galhau and Jens Weidmann, present their view of the future of the euro. The best preparation, they say, would be a 'strengthening of its foundations' rather than 'renationalisation'. With regard to institutions, they propose the establishment of a 'Common Treasury for the euro area, together with an independent fiscal council', *Le Monde*.

15 February: European Stability Mechanism (ESM) conference. Former ECB President, Jean-Claude Trichet, restates his proposal to reinforce the executive and the legislative branch of the euro area. This would require a Minister of Finance of the euro area and an administration acting as a sort of Treasury (<https://www.esm.europa.eu/press-releases/former-ecb-president-jean-claude-trichet-speaks-esm-conference>).

18-19 February: Brexit. The agreement obtained by David Cameron, the UK Prime Minister, to avoid Brexit covers the four areas originally identified. It recalls the particular status of the UK – which has not adopted the single currency, and is not a member of Schengen or the banking union – and enables changes to the arrangements for European citizens' access to social security benefits in the UK. Above all, the agreement aims to preserve the UK's influence in improving EU competitiveness, i.e. strengthening the internal market and its competitiveness by concluding trade agreements such as the transatlantic partnership (TTIP). In the field of social security, the European Council

conclusions clarify that ‘the Commission does not intend to propose that the future system of optional indexation of child benefits be extended to other types of exportable benefits such as old-age pensions’. Moreover, should the result of the UK referendum be negative, the agreement will cease to exist, OJ C 69I, 23 February.

26 February: European Semester/Country Reports. The European Commission publishes its annual analysis of the ‘economic and social challenges’ in the EU Member States, the so-called ‘country reports’, IP/16/332.

March

8 March: posting of workers. The European Commission proposes a ‘targeted’ revision of the rules governing the posting of workers, aiming to make changes in three main areas: the remuneration of posted workers, including those working as subcontractors, rules on temporary workers, and long-term postings. This targeted revision of the 1996 directive will complete the corresponding 2014 enforcement directive, which is to be transposed into national law by June 2016, COM (2016) 128.

8 March: towards a European pillar of social rights. In connection with the Five Presidents’ report of June 2015, and with a view to ‘completing Europe’s Economic and Monetary Union’, the European Commission launches a public consultation on the European Pillar of Social Rights. The outcome should feed into the reflection process launched by the Five Presidents’ report, and help in the preparation of the white paper on the future of the Economic and Monetary Union. The pillar, the legal status of which is unclear, should focus on the countries of the euro area, and will remain open to all non-euro area Member States who wish to join, MEMO/16/545 and COM (2016) 127.

9 March: European Semester/Member States’ obligations. Following up on its winter economic forecast, the Commission reminds Member States of the need to take necessary measures to meet their obligations under the Stability and Growth Pact (SGP), IP/16/704.

10 March: monetary policy. The ECB’s Governing Council decides to lower the interest rate on the main refinancing operations of the Eurosystem by five basis points (to 0.00%, from 16 March). The interest rates on the marginal lending facility and the deposit facility will be reduced by 5 and 10 basis points respectively (<http://www.ecb.europa.eu/press/pressconf/2016/html/is160310.en.html>).

15 March: inter-institutional agreement on ‘better law-making’. The Council, the Parliament and the Commission adopt a new inter-institutional agreement to improve the quality and the outcome of European legislation.

22 March: terrorist attacks in Brussels. Preceded by attacks in Ankara, Turkey, a few days earlier.

23 March: the International Labour Organization (ILO) supports the European Commission's 'pillar' of social rights. According to ILO Director-General, Guy Ryder, 'Strengthening the social dimension of the Economic and Monetary Union is a key part of the response to the global crisis, from which Europe still needs to fully recover. We hope that the Pillar of Social Rights will help to increase the attention given to social issues in EU policy making' (http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_462672/lang--en/index.htm).

April

6 April: referendum in the Netherlands on the EU-Ukraine agreement. 60% of Dutch voters, consulted in a referendum proposed by popular initiative, say 'no' to the association agreement between Ukraine and the European Union. The quorum of 30% of voters needed for the result to be valid is met, with a 32.2% turnout.

19 April: European Semester/excessive deficit procedure. The European Court of Auditors assesses the European Commission as being 'not strict enough' in its audit report, stating that 'further improvements are needed' to ensure 'effective implementation of the excessive deficit procedure', Special report 10/2016.

25 April: Comprehensive Economic and Trade Agreement (CETA) concluded between the EU and Canada. The parliament of Wallonia (Belgium) adopts a resolution calling on the regional government not to grant the federal executive full powers to sign the agreement (http://nautilus.parlement-wallon.be/Archives/2015_2016/RES/212_4.pdf).

28 April: structural reform support programme. The Committee of Permanent Representatives (COREPER) decides, on behalf of the Council, on its negotiating position on a proposal for a regulation on the establishment of a structural reform support programme, to 'help Member States to implement reforms', presented by the European Commission in late November 2015. 214/116 and COM (2015) 701 (<http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2015&numero=70>; <http://www.consilium.europa.eu/en/press/press-releases/2016/04/28-structural-reforms/>).

28 April: appeal against the Fiscal Compact (TSCG). The Belgian Constitutional Court rejects the action for annulment of the instruments of ratification of the Treaty on Stability, Coordination and Governance within the Economic and Monetary Union. Ruling No. 62/2016 of 28 April 2016, Belgian Constitutional Court (<http://www.const-court.be/public/f/2016/2016-062f.pdf>; short English version: http://www.const-court.be/cgi/judgments_popup.php?lang=en&ArrestID=4097).

May

10 May: posting of workers. The national parliaments of Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia trigger the so-called 'yellow card' procedure against the European Commission proposal.

18 May: European Semester/Country-specific Recommendations. According to the European Commission, 'Member States are making progress with reforms and addressing macroeconomic imbalances, but more is needed to consolidate Europe's recovery', IP/16/1724.

26 May: lists of safe countries. The European Association for the Defence of Human Rights (AEDH), EuroMed Rights and the International Federation for Human Rights (FIDH) warn against the dangers of using the concept of safety in processing asylum applications. By adopting such a list, the European Union (EU) and its Member States will institutionalise at European level a practice by which the Member States could refuse to fully comply with their responsibilities towards asylum seekers, in violation of their international obligations (<http://www.aedh.eu/Les-listes-de-pays-surs-de-l-Union.html>).

30 May: the CETA, not a 'mixed' agreement? Nine European leaders (United Kingdom, Finland, Spain, Estonia, Sweden, Portugal, Lithuania and Cyprus, joined by Italy), in a letter sent to the European Commission, claim that the CETA is not a 'mixed' agreement, i.e. it does not need to be ratified by national parliaments.

31 May: Eurostat/unemployment rate. The euro area (EA19) seasonally-adjusted unemployment rate is 10.2% in April 2016, stable compared with March 2016, and lower than the rate of 11.0% recorded in April 2015. This is the lowest rate recorded in the euro area since August 2011. The EU28 unemployment rate is 8.7% in April 2016, down from 8.8% in March 2016, and from 9.6% in April 2015. This is the lowest rate recorded in the EU28 since April 2009, STAT/16/1984.

June

13 June: implementation of the first phase of the Five Presidents' Report of June 2015. Council Recommendation on the establishment of national competitiveness and productivity boards, 10083/16 and COM (2015) 601.

21 June: monetary policy/German Constitutional Court. The German Constitutional Court resolves to accept the case law of the Court of Justice of the European Union with reference to the European Central Bank's 'Outright Monetary Transactions' (OMT) programme, Press Release 34/2016 of 21 June 2016 (<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2016/bvg16-034.html>).

23 June: referendum on the United Kingdom's membership of the European Union, or exit from it (Brexit). The question put is 'Should the United Kingdom remain a member of European Union or leave the European Union?', to which 51.9% of voters reply 'leave'. The turnout is 72.2%.

24 June: the UK Prime Minister David Cameron announces his resignation, but states that he will remain in his post until the autumn of 2016.

25 June: a petition is launched on the House of Commons website calling for a second referendum to be held on the UK's membership of the EU (<https://petition.parliament.uk/petitions/131215>).

25 June: European Commissioner Jonathan Hill, responsible for financial stability, financial services and the capital markets union, resigns. His tasks are transferred to the Latvian Valdis Dombrovskis, the Vice-President responsible for the euro and social dialogue. The resignation takes effect from 15 July 2016, Statement/16/2332.

25 June: meeting of the Foreign Affairs Ministers of the six founding countries of the EU in Berlin. They list the major challenges facing the EU 'in a globalised world' and in a context of growing instability and geopolitical changes at Europe's borders (<http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/europe/evenements-et-actualites-lies-a-la-politique-europeenne-de-la-france/article/declaration-conjointe-des-ministres-francais-allemand-belge-italien>).

28 June: European Semester 2016/Country-specific Recommendations. The European Council endorses the Country-specific Recommendations. The European Council has taken stock 'of the progress achieved in the work towards completing the Economic and Monetary Union, including the roadmap to complete the Banking Union' and 'calls for work to be taken forward'. Among the most recent developments, the European Council 'endorses the recommendation on National Productivity Boards'.

28 June: Brexit/European Council, with 28 countries. 'The UK Prime Minister informed the European Council about the outcome of the referendum in the UK'. This is the only reference to Brexit in the conclusions of the European Council of all EU Heads of State or Government, EUCO 26/16.

29 June: meeting of the Heads of State or Government without the United Kingdom. Following the informal meeting of the 27 Heads of State or Government, the President of the European Council, Donald Tusk, and the President of the European Commission, Jean-Claude Juncker, confirm the approach to be taken by the EU towards Brexit: there will be no negotiations until the UK starts exit proceedings by triggering Article 50 of the EU Treaty (TEU).

July

1st July: Slovakia takes over the Presidency of the Council of the European Union from the Netherlands. Its five priorities are: economic growth, the digital single market, developing the energy union, the migration crisis and EU enlargement (<http://www.eu2016.sk/en/programme-and-priorities/programme-of-the-slovak-presidency>).

1st July: the Austrian Constitutional Court declares the second round of the Austrian presidential election of 22 May invalid. The Green Party's candidate Alexander Van der Bellen was slightly ahead of the extreme right candidate Norbert Hofer, with irregularities in the counting of some votes. In an unprecedented decision, the Constitutional Court

rules that even if there is no evidence of electoral fraud, the irregularities nevertheless invalidate the vote.

5 July: CETA, a ‘mixed’ agreement? The European Commission agrees to propose that CETA be viewed as a ‘mixed’ agreement, thus needing to be ratified by national parliaments. Until now, the Commission has argued that the agreement falls under the exclusive competence of the European Union (EU), thus excluding national parliaments from the adoption procedure, IP/16/2371.

7 July: new mandate for the Frontex agency. For three years, the joint campaign Frontexit has denounced the incompatibility of the Frontex agency with the respect of human rights. According to the European Association for the Defence of Human Rights (AEDH), the establishment of a new European border guard body to replace Frontex, which the European Parliament approved on 5 July, is yet another step in the war waged by the European Union (EU) against migrants and refugees (<http://www.aedh.eu/Nouveau-mandat-de-l-agence-Frontex.html>).

12 July: end of the European Semester cycle. The ECOFIN Council publishes its 2016 Country-specific Recommendations on the economic, budgetary and employment policies of the Member States. The 2016 Country-specific Recommendations are addressed to 27 of the 28 EU Member States. Since Greece is subject to an economic adjustment programme, it does not receive country-specific recommendations, thereby avoiding duplication, 425/16.

12 July: excessive deficit procedure/Portugal and Spain. The Council finds that Portugal and Spain have not taken effective action in response to its recommendations. According to the Council, these countries will not have reduced their deficits below 3% of GDP, the EU’s reference value for government deficits, by the recommended deadline. In both cases, it states, the fiscal effort falls significantly short of what was recommended. The Commission has twenty days to recommend further Council decisions imposing fines. These fines should amount to 0.2% of GDP, although Portugal and Spain can submit reasoned requests within 10 days for a reduction of the fines. The Council will have 10 days to approve the fines, 427/16.

12-13 July: EU/China summit in Beijing. The leaders make progress on the strategic partnership between the EU and China. Political guidance is given on the completion of a comprehensive investment agreement, and they sign an energy roadmap (<http://www.consilium.europa.eu/en/meetings/international-summit/2016/07/12-13/>).

14 July: Capital Markets Union. The European Commission proposes amendments to the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations, marking another step towards the creation of the Capital Markets Union, IP/16/2481.

18 July: application of Union law. According to the European Commission, Member State compliance with EU law is improving, but much more needs to be done to unleash the full potential of the Single Market. The Annual Report shows how the Commission

monitored and enforced EU law in 2015, while the Single Market Scoreboard reveals that barriers to the free movement of persons, services, goods and capital in the EU are being eliminated, IP/16/2245.

20 July: posting of workers. Having considered the concerns of national parliaments, the European Commission adopts a communication re-examining its proposal for a revision of the posting of workers directive, IP/16/2546.

27 July: Poland/Rule of law: the Commission issues a recommendation to Poland. Following the publication on 1 June of a European Commission opinion, Poland, on 22 July, had adopted a new law on the Constitutional Tribunal. The Commission has assessed the overall situation, especially in the light of the new law, and concludes that, even if some of its concerns have been addressed by that law, important issues of concern regarding the rule of law in Poland remain, IP/16/2643.

August

24 August: social statistics. The European Commission adopts a proposal for a regulation on new, integrated ways to collect and use data from social surveys. According to the Commission, the existence of a more solid evidence base in terms of social indicators will improve the analysis of social developments and contribute to a 'social triple-A' for Europe, IP/16/2867.

27 August: annual meeting of central bankers in Jackson Hole in the United States. Benoit Coeuré, speaking on behalf of the European Central Bank (ECB), stresses how insufficient the reforms in the euro area have been (<https://www.ecb.europa.eu/press/key/date/2016/html/sp160827.en.html>).

30 August: State aid. Ireland granted 13 billion euros of illegal tax benefits to Apple. According to the European Commission, this practice is illegal under EU state aid rules, because it allowed Apple to pay substantially less tax than other businesses. Ireland must now recover the illegal aid, IP/16/2923.

31 August: Brexit, no second referendum. The UK Prime Minister, Theresa May, rules out holding a second referendum on the UK's exit from the European Union (<https://www.gov.uk/government/news/cabinet-meeting-at-chequers-31-august-2016-pm-statement>).

September

1st September: consumer protection/EP opposition. The European Parliament's Economic and Monetary Committee rejects proposals aimed at providing greater protection to consumers buying packaged financial products, describing them as 'misleading' and flawed, and votes unanimously to send the proposals back to the Commission for revision (<http://www.europarl.europa.eu/news/en/press-room/>

20160830IPR40525/econ-committee-unanimously-rejects-commission-s-investor-protection-proposals).

2 September: ratification of the climate agreement (COP21) by China and the United States. The two main world generators of greenhouse gas ratify the Paris Climate Agreement.

4-5 September: the Heads of State or Government of the G20 States meet in Hangzhou in China. The subjects discussed include the world economy, the situation in the South China Sea, the refugee crisis and the fight against terrorism.

8 September: Brexit/Ireland. The House of Lords begins its investigations into the impact of Brexit on relations with Ireland (<https://www.gov.uk/government/speeches/strengthening-uk-ireland-relations-ahead-of-eu-exit-negotiations>).

8 September: European Parliament/Brexit. The European Parliament's Conference of Presidents appoints Guy Verhofstadt, MEP and former Belgian Prime Minister, as European Parliament representative in the Brexit negotiations (<http://www.europarl.europa.eu/news/en/press-room/20160908IPR41661/parliament-appoints-guy-verhofstadt-as-representative-on-brexit-matters>).

9 September: State of the Union speech by the President of the European Commission, Jean-Claude Juncker. In his speech to the European Parliament, he announces the establishment of a 'European Pillar of Social Rights', an initiative linked to the Five Presidents' Report of June 2015, entitled 'Completing Europe's economic and monetary union', which had stressed that Europe should be striving for a 'Social Triple-A', Speech-16-3043.

9 September: 1st Mediterranean EU countries (EUMed) summit in Athens. At this informal summit of the Southern countries, the seven Heads of State and Government present (of Greece, France, Italy, Portugal, Spain, Cyprus and Malta) adopt the 'Athens Declaration', in the words of the Greek Prime Minister, Alexis Tsipras. The document is intended to prepare for the future (<http://www.naftemporiki.gr/story/1145928/athens-declaration-of-the-1st-mediterranean-eu-countries-summit>).

9 September: Eurogroup/Bratislava. During the Eurogroup meeting, the Greek government is strongly encouraged to speed up the implementation of the remaining planned reforms. The group also takes stock of the Commission preparations in relation to the partial freezing of structural funds following the Spanish and Portuguese excessive debt procedures, Press Releases/2016/09/09-eurogroup. Remarks by J. Dijsselbloem following the Eurogroup meeting of 9 September 2016.

9 September: European Pillar of Social Rights. Working for a better deal for all workers. The European Trade Union Confederation (ETUC) presents its priorities for the European Commission consultation, adopted at the ETUC Extraordinary Executive Committee meeting of 6 September 2016 (<https://www.etuc.org/documents/etuc-position-european-pillar-social-rights-working-better-deal-all-workers#.We2ZWjBcWUk>).

9-10 September: informal ECOFIN Council in Bratislava. A first debate is held on ‘The future of EU economic policies’, as well as Brexit, but also a discussion on ‘Enhancing economic and monetary union – the fiscal pillar’, one of the priorities of the Slovak Presidency (<http://www.eu2016.sk/en/press-releases/eu-finance-ministers-meet-in-bratislava-to-discuss-a-vision-for-the-euro-area-taxation-and-investments>).

16 September: summit of the 27 countries without the UK, and informal summit of the Southern EU countries. At an informal summit in Bratislava (Slovakia), the leaders of the 27 begin an ‘honest discussion’ on the features of post-Brexit Europe.

20 September: EU/competitiveness. The Council issues a recommendation on the establishment of national boards to analyse developments potentially affecting productivity and competitiveness, 521/16.

28 September: ECB President/German Parliament. Speaking to the German Bundestag, the President of the European Central Bank (ECB), Mario Draghi, defends his zero-rate policy (which German MPs consider to be a disguised bail-out plan), emphasising the efficacy of the measures taken (https://www.ecb.europa.eu/press/key/date/2016/html/sp160928_1.en.html).

October

2 October: referendum in Hungary/relocation of asylum seekers. 98.3% of the Hungarian voters choose to reject the binding decision to relocate asylum seekers within the European Union. However, only a minority of those on the electoral roll actually vote (40.4%), questioning the validity of the vote (http://www.valasztas.hu/en/ref2016/481/481_o_index.html).

4 October: climate change/ratification of the Paris Agreement (COP21). Following the vote in the EP giving its consent, the Council adopts by written procedure (i.e. without debate) the decision for EU ratification of the Paris Agreement. This Agreement will enter into force 30 days after its ratification by at least 55 countries accounting for at least 55% of total global greenhouse gas emissions. Up to now, the agreement has been ratified by 63 countries, accounting for 52.1% of world emissions, 549/16.

11 October: EU/climate change/taxation. The ECOFIN Council adopts ‘conclusions on climate change’, with a view to the 22nd Conference of the Parties to the UN Framework Convention on Climate Change (COP22), which will take place in Marrakesh, from 7 to 18 November 2016. The Council also adopts conclusions on ‘tax transparency’, 13111/16.

10-11-12 October: European Pillar of Social Rights/Committee of the Regions (CoR). The CoR ‘expects the European Commission to comply with the principle of subsidiarity when proposing the European Pillar of Social Rights and to respect the broad competences of national and sub-national authorities in social policy; it must also be ensured that the content of the pillar is compatible with the general principles of the Better Regulation agenda’, Opinion, 119th plenary session.

13 October: opinion of the German Constitutional Court authorising the signing of the CETA. On completion of a rapid procedure, the German government is authorised to sign the CETA and to approve its provisional application, which will only affect those parts that lie ‘indisputably’ within the scope of the competences of the European Union, pending ratification by the parliaments of the 28 EU Member States. The Court also reserves the right to decide on the ‘constitutionality’ of the agreement, Press Release 71/2016 (http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2016/bvg16-071.html;jsessionid=D54617DA983D9B8BC6253409DEB11731.2_cid383).

19 October: implementation of the Five Presidents’ Report of June 2015. The European Commission appoints the Chair and members of the independent advisory European Fiscal Board. The Board will be chaired by the Dane Niels Thygesen, and have four members: Roel Beetsma (NL), Massimo Bordignon (IT), Sandrine Duchêne (FR) and Mateusz Szczurek (POL). The task of the Board is to provide the European Commission with an independent evaluation of the implementation of the Stability and Growth Pact (*Two Pack*), focusing particularly on ‘cases of particularly serious non-compliance with the rules’, EU Decision 2015/1937 of the European Commission (OJ L 282, 28 October 2015) and MEMO/16/3481.

19 October: tripartite social summit. The main topic of this social summit is: ‘Addressing Europe’s common challenges: generating growth, creating jobs and ensuring fairness’. On Brexit, the European social partners, in a joint statement, confirm their intention to preserve as close economic relations between the European Union and the United Kingdom as possible, while preserving the integrity of the Single Market, and fully respecting the four freedoms linked to it, i.e. free movement of goods, services, capital and persons (<https://etuc.org/press/tripartite-social-summit-european-social-partners-joint-statement-letter#.We2a4jBcWUk>).

25 October: European Semester/application of the *Two Pack*. The European Commission asks 7 of the 19 members of the euro area (Belgium, Cyprus, Spain, Finland, Italy, Lithuania, Portugal) for explanations of their budgetary forecasts, to ensure that these comply with European rules.

25 October: presentation of the European Commission’s work programme for 2017. This programme contains 10 priorities linked to the objective: ‘Delivering a Europe that protects, empowers and defends’, COM (2016) 710.

27 October: Poland/Rule of Law. Poland refuses to comply with the European Commission recommendations on the rule of law. Beata Szydło, the Polish Prime Minister, announces that Poland will not make any changes to its constitutional system, as it considers that the recommendations made by the European Commission on 27 July 2016 are unfounded. Poland refuses to take action by the deadline of

27 October set by the Commission (http://www.msz.gov.pl/en/news/mfa_statement_on_the_polish_government_s_response_to_commission_recommendation_of_27_07_2016;jsessionid=F97B5A89998E75E9B5A2A85EE70F6F89.cmsap1p).

28 October: Brexit/Northern Ireland. The High Court of Northern Ireland hands down its first decision on a legal challenge to Brexit. It rejects the claim from the applicants that the Brexit decision should be put to the Northern Irish parliament for its approval, in the belief that Brexit would violate the 1998 Good Friday Peace Agreement ([http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/\[2016\]%20NIQB%2085/j_j_MAG10076Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/[2016]%20NIQB%2085/j_j_MAG10076Final.htm)).

28 October: European Commission/resignation. Kristalina Georgieva, European Commission Vice-President responsible for the budget, announces her resignation from the European Commission to join the World Bank in 2017. She had left the bank before joining the European Commission (https://ec.europa.eu/commission/2014-2019/georgieva/announcements/statement-vice-president-kristalina-georgieva-izyavlenie-na-kristalina-georgieva-zamestnik_en).

30 October: signature of the comprehensive economic and trade agreement between the EU and Canada. The CETA will provisionally enter into force after the vote of approval of the European Parliament. It must also be ratified by the national and regional parliaments of the European Union Member States.

November

4 November: entry into force of the Paris Climate Agreement (COP21). Now ratified by 55 States accounting for 55% of greenhouse gas emissions, the COP21 enters into force just under a year after its adoption by 195 countries on 12 December 2017. In line with the provisions of the agreement, no State party may withdraw before a period of four years has elapsed.

8 November: United States of America/presidential elections. The Republican candidate, Donald Trump, is elected President. He will take up his post in the White House on 20 January 2017.

9 November: autumn economic forecasts. The Commission foresees 1.5% growth in the euro area and 1.6% for the EU as a whole in 2017 (https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/autumn-2016-economic-forecast_en).

16 November: European Semester/‘autumn package’. The Commission publishes the ‘autumn package’, launching the 2017 European Semester. The Commission recognises that ‘in most cases, the large increase in debt in the recent past is the result of bank recapitalisation and low growth in nominal GDP, not of fiscal profligacy’ IP/16/3664 and COM (2016) 727.

7-18 November: climate. The Conference of Parties to the United Nations Framework Convention on Climate Change (COP22) begins in Marrakesh. The question of financing is one of the most difficult issues.

23 November: CETA/EP. The European Parliament rejects a resolution from 89 MEPs asking for the Court of Justice of the European Union to be consulted before any application of the CETA.

24 November: the President of the European Parliament announces his departure. The EP President, Martin Schulz, announces that he will end his term of office as an MEP in January 2017 to return to German politics, to prepare for the federal elections in autumn 2017.

28 November: the Organisation for Economic Co-operation and Development (OECD) publishes its 'Global Economic Outlook' report. The OECD calls, in particular, to take advantage of the expansionary monetary policies, in order to take budgetary initiatives and relaunch economic growth (<https://www.oecd.org/newsroom/make-better-use-of-fiscal-initiatives-to-escape-low-growth-trap-oecd-says-in-latest-global-economic-outlook.htm>).

December

4 December: Italy/constitutional referendum. The Italians vote 'no' in a constitutional referendum proposed by Prime Minister Matteo Renzi, seeking to approve a drastic reduction in the powers of the Senate, limits on the powers of the regions and abolition of the provinces. 59.1% voted against, and 40.9% in favour. The turnout was 65.5%.

5 December: Italy/President of the Council (Prime Minister) Matteo Renzi resigns. As announced, Matteo Renzi resigns after the definitive adoption of the 2017 budget by the Senate, with 166 votes in favour, 70 against and one abstention.

5 December: OECD/pensions. According to the OECD (2016 Pensions outlook), the design of funded private pensions needs to be improved (<https://www.oecd.org/fr/retraites/l-architecture-des-regimes-prives-de-retraite-par-capitalisation-doit-etre-amelioree.htm>; <https://www.oecd.org/pensions/design-of-funded-private-pensions-needs-to-be-improved.htm>).

5 December: Eurogroup/economic growth. According to a Eurogroup statement, Germany, Luxembourg and the Netherlands 'could use their favourable budgetary situation to further strengthen their domestic demand and growth potential, depending on country specific circumstances', while respecting rules and their national requirements. According to the Eurogroup President, Jeroen Dijsselbloem, the Finance Ministers of the euro area could grant Greece a slight tidying-up of its debt, but they will not embark upon a 'major relief operation'.

6 December: taxation. The ECOFIN Council examines a directive designed to combat tax fraud. The directive is based on the recommendations issued by the OECD in 2015 to tackle base-erosion and profit-shifting (BEPS) (http://www.consilium.europa.eu/fren/meetings/ecofin/2016/12/st15205_enfr16_pdf/).

6 December: Brexit. Michel Barnier, the European Commission's Chief negotiator on Brexit, announces that a Brexit agreement needs to be concluded with the British government by October 2018.

6 December: very slight rise in EU GDP. According to Eurostat, GDP rose during the third quarter of 2016 by 0.4% in the European Union and 0.3% in the euro area compared to the previous quarter, 244/2016.

7 December: the Committee of Permanent Representatives (COREPER) approves an amendment to the Schengen Borders Code, to reinforce checks at external borders. The purpose of the amendment is to step up systematic checks in the relevant data bases (<http://www.consilium.europa.eu/en/press/press-releases/2016/12/07-systematic-checks/>).

7 December: visa suspension mechanism. According to the new rules approved by the European Parliament and Council negotiators, the European Commission and the Member States can reintroduce visa obligations more quickly and easily (<http://www.europarl.europa.eu/news/en/press-room/20161128IPR53515/visa-suspension-mechanism-parliament-and-council-negotiators-strike-a-deal>).

7 December: the European Commission fines three major banks. The European Commission imposes total fines of 485 million euros on Crédit Agricole (FR), HSBC (UK) and JPMorgan Chase (US) for participating in a cartel in euro interest rate derivatives, IP/16/4304.

8 December: monetary policy. The European Central Bank (ECB) decides to keep its key interest rate at 0% and to extend its asset purchase programme (APP) until December 2017, although reducing it from 80 to 60 billion euros per month from April 2017. Implementation of structural reforms, according to the ECB, 'needs to be substantially stepped up to reduce structural unemployment and boost potential output growth in the euro area. Structural reforms are necessary in all euro area countries. The focus should be on actions to raise productivity and improve the business environment, including provision of an adequate public infrastructure, which is vital to increase investment and boost job creation' (<https://www.ecb.europa.eu/press/pressconf/2016/html/is161208.en.html>).

8 December: the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council holds an 'exchange of views' on the 2017 European Semester. The Council approves the 'employment and social aspects' of the euro area draft recommendation. It conducts a policy debate on the European Pillar of Social Rights, takes stock of progress on the Posting of Workers Directive and looks at the public health aspects of the 2017 Annual Growth Survey, 3507th session of the Employment, Social Policy, Health and Consumer Affairs Council (http://www.consilium.europa.eu/en/meetings/epsco/2016/12/st15389_en16_pdf/).

8 December: the International Monetary Fund (IMF) publishes the concluding statement of its fifth post-programme monitoring mission. According to the IMF,

while economic growth has been sustained thanks to good levels of exports, Portugal needs to strengthen the factors driving its growth in order to maintain its economic dynamism (<https://www.imf.org/en/news/articles/2016/12/08/ms120816-portugal-staff-concluding-statement-of-the-fifth-post-program-monitoring-mission>).

9 December: Oliver Hart and his colleague Bengt Holmström receive the Nobel Prize in Economics for their work on contract theory, which covers everything from privatisation to remuneration of CEOs. In the view of Oliver Hart, the euro is a ‘mistake’, and if the European Union wishes to survive and prosper, it should start a process of decentralisation and allow Member States to take more of their own decisions (<https://www.euractiv.fr/section/euro-finances/news/economic-nobel-prize-winner-the-euro-was-a-mistake/>).

11 December: legislative elections in Romania. The Social Democratic Party (PSD) is victorious, with 45.5% of votes to the Chamber and 45.7% of votes to the Senate. The National Liberal Party (PLN) obtains 20% and 40.4% of the votes respectively. Turnout is 39.49%.

12 December: Italy/successor to Renzi. The new President of the Council (Prime Minister) of Italy, Paolo Gentiloni, announces the composition of his government. Most of the former ministers remain in their posts. Angelino Alfano is appointed Minister of Foreign Affairs, and is replaced as Minister of the Interior by Domenico Minniti detto Marco.

13 December: EU legislation. The Presidents of the European Commission, Jean-Claude Juncker, the European Parliament, Martin Schulz, and the Council, Robert Fico, sign a joint declaration setting out the European Union’s legislative objectives and priorities for 2017 (https://ec.europa.eu/priorities/announcements/union-delivers-swifter-and-better-results-three-institutions-sign-joint-declaration_en).

13 December: social security coordination. The European Commission adopts a proposal to revise the social security coordination rules. The Commission proposal is part of its package of measures on professional mobility, IP/16/4301 and COM (2016) 815.

15 December: CETA/social rights/France. The French National Consultative Commission on Human Rights (CNCDH) adopts, with 33 votes in favour and four abstentions, an opinion on the CETA and the respect of human rights, particularly economic and social rights, environmental principles, but which also addresses issues of justiciability and the rule of law. In its opinion, the CNCDH questions the effectiveness of the ILO international conventions on workers’ rights referred to in the CETA. The legal wording of the CETA also suggests that the application of these rights might not be binding. Moreover, there is no sanction mechanism to apply if these principles are not respected by the European Union or by Canada. In the CNCDH’s view, this is ‘a missed opportunity to make progress in the effective implementation of international law’ (http://www.cncdh.fr/sites/default/files/161215_avis_accords_comm._et_fin_et_droits_de_lhomme_format_a5_o.pdf).

15 December: European Council, 28 Member States. The European Council adopts conclusions on migration, security and defence, Syria and Ukraine, paving the way for ratification of the EU-Ukraine Agreement by the Netherlands. During an informal meeting of 27 countries, the Heads of State or Government adopt a statement on negotiations with the United Kingdom, EUCO 34/16 (and <http://www.consilium.europa.eu/en/press/press-releases/2016/12/15-statement-informal-meeting-27/>).

16 December: the International Covenant on Social Rights celebrates its 50th birthday. On this occasion, the General Secretary of the European Trade Union Confederation (ETUC) declares that: ‘the Covenant is a milestone in world-wide workers’ rights. But fifty years later it is still not properly implemented, even in the EU. It should be compulsory re-reading for Judges in the European Court of Justice and lawmakers everywhere. There should be a system set up in the EU for complaints to be made if the Covenant is not respected’.

19 December: the Council prolongs sanctions against Russia in several areas. These measures, some of which were imposed in July 2014, are extended until 31 July 2017, CP 794/16 (<http://www.consilium.europa.eu/en/press/press-releases/2016/12/19-sanctions-russia/>).

21 December: trade policy/EU-Singapore agreement. According to the Advocate General of the Court of Justice of the EU, some parts of the agreement do not fall under the exclusive competence of the Union and will have to be ratified by all the national parliaments, Opinion, procedure 2/15.

22 December: European Semester/European Trade Union Confederation (ETUC). Publication of the ETUC resolution on trade union involvement in the European Semester, adopted at the Executive Committee meeting held on 14 and 15 December. According to the ETUC, ‘to date, many of the recommendations coming out of the Semester are detrimental to workers. Often, they focus on fiscal consolidation, the decentralisation of collective bargaining and the reform of the wage-setting system, and the reduction of employment protection legislation. Reinforcing the social agenda of economic governance is still a difficult challenge for the trade union movement’. The ETUC announces a new working method, the ‘Semester 2.0’, for the ETUC and its affiliates (<https://www.etuc.org/documents/etuc-resolution-trade-union-involvement-eu-semester#.We2gRDBcWUk>).

List of abbreviations

AEDH	Association Européenne pour la Défense des Droits de l'Homme (European Association for the Defence of Human Rights)
AGS	Annual Growth Survey
AIM	International Association of Mutual Benefit Societies
ASEAN	Association of Southeast Asian Nations
CEAS	Common European Asylum System
CED	Council of European Dentists
CEEP	Centre européen des entreprises à participation publique et des entreprises d'intérêt économique général (Centre of Employers and Enterprises providing Public Services and Services of general interest)
CEN	Comité européen de normalisation (European Committee for Standardization)
CETA	Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
CNCDH	Commission nationale consultative des droits de l'homme (French National Consultative Commission on Human Rights)
COFACE	Confederation of Family Organisations in the European Union
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
COSAC	Conference of Parliamentary Committees for Union Affairs
CSR	Corporate social responsibility
DG	Directorate General
DG ECFIN	Directorate General for Economic and Financial Affairs, European Commission
DG EMPL	Directorate General for Employment, Social Affairs and Inclusion, European Commission
DGB	Deutscher Gewerkschaftsbund (German Trade Union Confederation)
EASO	European Asylum Support Office
EC	European Community
ECB	European Central Bank
ECHR	European Court of Human Rights
ECOFIN	Economic and Financial Affairs Council (of the EU)
EEA	European Economic Area
EESC	European Economic and Social Committee
EMU	Economic and Monetary Union
EP	European Parliament
EPP	European People's Party
EPSCO	Employment, Social Policy, Health and Consumer Affairs Council (of the EU)
EPSU	European Public Services Union
ESIP	European Social Insurance Platform
ESM	European Stability Mechanism
ESO	European Standardisation Organisation
ESPN	European Social Policy Network

ESU	European Social Union
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
FEANTSA	Fédération européenne d'associations nationales travaillant avec les sans-abri (European Federation of National Organisations working with the Homeless)
GDP	Gross Domestic Product
HCR	High Commissioner for Refugees
HRW	Human Rights Watch
HSFG	Healthcare Services Focus Group
ICS	Investment Court System
ILO	International Labour Organization
IMCO	Internal Market and Consumer Protection (a European Parliament Committee)
IOM	International Organization for Migration
LABREF	Labour Market Reforms Database
LTC	Long-term care
MEP	Member of the European Parliament
MS	Member State
MSF	Médecins sans frontières (Doctors Without Borders)
NGO	Non-governmental Organisation
NSW	Non-standard workers
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
OMC	Open Method of Coordination
OSE	Observatoire social européen (European Social Observatory)
S&D	Progressive Alliance of Socialists and Democrats
SE	Self-employed
SGP	Stability and Growth Pact
SME	Small and Medium-sized Enterprise
SPC	Social Protection Committee
SSD	Sectoral social dialogue
SSDC	Sectoral social dialogue committee
SSM	Single Supervisory Mechanism
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TTIP	Transatlantic Trade and Investment Partnership
UEAPME	Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (European Association of Craft, Small and Medium-sized Enterprises)
UKIP	United Kingdom Independence Party
UN	United Nations
WHO	World Health Organisation
WLB	Work-life balance

List of country codes

AT	Austria
BE	Belgium
BG	Bulgaria
CH	Switzerland
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IS	Iceland
IT	Italy
LI	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia
MK	Former Yugoslav Republic of Macedonia
MT	Malta
NL	The Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
RS	Serbia
SE	Sweden
SI	Slovenia
SK	Slovakia
TR	Turkey
UK	United Kingdom

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